

Administrator has been notified of the proposed action and the supporting information. Once this advice is received from Code HS, field installations should proceed with established notification to offerors and press release procedures (See 1805.303-71 and 1805.303-72).

#### 1805.303-71 [Amended]

3. In the redesignated section 1805.303-71, paragraph (a)(1)(iv) is amended by deleting the phrase "and section 1805.303-70".

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Part 192

[Docket No. PS-113; Amendment 192-71A, 195-49A]

RIN 2137-AB44

#### Operation and Maintenance Procedures for Pipelines

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final Rule: Response to Petition for Reconsideration.

**SUMMARY:** On February 11, 1994, RSPA issued a final rule amending existing operation and maintenance (O&M) procedures for gas pipeline facilities. The American Gas Association (Petitioner or A.G.A.) filed a Petition for Reconsideration (petition) concerning five provisions of the final rule. After careful consideration of the petition, RSPA concludes the petition should be denied in part, and granted in part. RSPA is granting those aspects of the petition that relate to: (1) procedures required to be included in an operator's O&M manual, and (2) the extent of the requirement to address malfunctions and other deviations during abnormal operations.

**EFFECTIVE DATE:** This final rule takes effect April 17, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mike Israni (202) 366-4571, concerning the contents of this final rule, or the Dockets Unit, (202) 366-4453, regarding copies of this final rule or other material in the docket.

#### SUPPLEMENTARY INFORMATION:

##### Background

RSPA promulgated the final rule on Operations and Maintenance Procedures

for Pipelines (59 FR 6579; February 11, 1994) pursuant to 49 U.S.C. 60101 *et seq.* The purpose of the rule is to ensure that gas pipeline operators maintain thorough gas pipeline operation and maintenance (O&M) procedures. Gas pipeline operators are now required to include detailed procedures on normal and abnormal operation, maintenance and emergency-response activities in their O&M manual. Gas pipeline operators are also responsible for annually reviewing and updating their O&M manual. Furthermore, both gas and hazardous liquid pipeline operators are required to prepare procedures to be followed to safeguard personnel from the hazards associated with the unsafe accumulation of vapor or gas in excavated trenches. As RSPA explained in the final rule, these actions will reduce the likelihood of pipeline failures, and provide a better basis for personnel training.

#### Summary of Petition and Comments on Petition

In its petition, A.G.A. raised five issues relating to various aspects of the final rule, and requested that RSPA modify or clarify the final rule accordingly. The following sections summarize the issues raised in the petition, and provide RSPA's response to each request.

##### *I. Extent of a Gas Pipeline Operator's Annual Review of its O&M Manual*

Petitioner asserts that the requirement that an operator review its activities periodically to determine the effectiveness of its operation and maintenance procedures (49 CFR 192.605(b)(8)) coupled with the limited amount of time estimated to be required to complete an annual update of an operator's procedures supports a change in 49 CFR 192.605(a). Specifically, petitioner urges that the annual review required by section 192.605(a) be limited to changes needed to address any new regulatory changes. Petitioner overstates the burden that an annual review would place on operators if the review is not limited to updates because of regulatory changes. Although the annual review is not limited to regulatory changes, § 192.605(a) does not require an annual line-by-line review of every procedure contained in an operator's manual. Neither does it require an annual comprehensive review of an operator's activities to determine whether changes to the operation and maintenance manual are needed.

The annual review under § 192.605(a) requires that an operator annually review its manual, and that deficiencies

identified during periodic reviews of activities (under § 192.605(b)(8)) are addressed. While serious deficiencies, possibly identified following an accident, may require immediate correction of operating procedures, other deficiencies may await an annual update. Updating of operation and maintenance procedures on a regular, established basis makes good business sense and enhances the safe operation of the pipeline. Retaining outdated procedures could confuse an operator's personnel as to the appropriate course of action.

Petitioner stated that 4.4 hours is insufficient time for one of its member operators to complete this review. We agree. The 4.4 hours noted in the preamble was based on 54,300 operators. The majority (52,000) of these operators are the master meter operators, whose plans are expected to be very simple and will have a minimal effect. In the justification to support the Paperwork Reduction Act, RSPA calculated that the initial burden was 104.3 hours per operator (based on 2,300 operators), excluding master meter operators. This 104.3 hours includes 52.2 hours that were already required by earlier O&M regulations. The additional 52.1 burden hours represent a one-time effort to develop additional O&M procedures that will affect these 2,300 operators only in the first year following the publication of this regulation. After the first year, the burden hours of all O&M regulations will return to the annual 52.2 hours per year per operator. The paper work justification is filed in the Docket.

Accordingly, Petitioner's request to limit the annual review required by § 192.605(a) is denied.

##### *II. Procedures Required To Be Included in an Operator's O&M Manual*

In its petition, A.G.A. asserts that section 192.605(b) of the final rule should be clarified to reflect that an operator must only include procedures in its manual that are applicable to its particular pipeline system (49 CFR 192.605(b)). Petitioner believes that as written, the regulation requires a gas pipeline operator to include O&M procedures responsive to all of the procedural requirements listed under sections 192.605(b)(1)-(10), regardless of whether particular regulations are applicable to an operator's pipeline system.

In the final rule, § 192.605(b) requires that the O&M manual required by § 192.605(a) must include certain specific procedures to provide safety during maintenance and operations. Sections 192.605(b)(1)-(10) list ten

specific procedural elements which are to be included in the operator's manual. However, not all of these subsections are applicable to operations and maintenance activities at every gas pipeline facility. RSPA never intended that a gas pipeline operator have every procedure set forth in those subsections. In response to comments, RSPA stated in the preamble to the final rule (59 FR 6580) that:

RSPA requires operators to prepare O&M procedures only for those pipeline facilities within their system. For example, it would not be necessary to prepare compressor startup procedures if the company has no compressors. The procedures should be clear, straightforward and applicable to the company's system.

Petitioner suggests that the words "if applicable" be added after the word "following" to the text of § 192.605(b) to clarify that procedures be prepared for operational situations only to the extent that an operator will face such a situation.

RSPA agrees that the regulation, as written, may seem to unnecessarily require an operator to produce procedures relating to the operation of a gas pipeline system that have no practical value to anyone. Therefore, RSPA is amending the final rule by adding the term "if applicable" in the text of § 192.605(b) after the word "following."

### *III. Procedures Regarding Protection of Personnel in Excavated Trenches From Unsafe Accumulations of Vapor or Gas*

Petitioner also requested that the requirement that operators include procedures in their operations manuals relating to worker exposure to gas or hazardous vapors in excavated trenches (49 CFR 192.605(b)(9) and 49 CFR 195.402(c)(14)) be broadened to require operators to include procedures to address worker safety in general.

Sections 192.605(b)(9) and 195.402(c)(14) of the final rule require that gas and hazardous liquid operators include procedures in their respective O&M plans to address the following:

Taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and making available when needed at the excavation, emergency rescue equipment, including a breathing apparatus and a rescue harness and line.

RSPA does not agree with Petitioner's argument that a requirement specifically addressing worker safety in excavated trenches will give the "impression that this is the only worker safety provision that need be addressed in a proper O&M plan." While it may be the only provision in this rulemaking directly

addressing worker safety, many of RSPA's rules indirectly impact worker safety.

Petitioner also argues that "RSPA has not demonstrated that current Office of Pipeline Safety (OPS) regulations do not adequately prevent worker exposure to hazardous vapors or gas." RSPA has broad rulemaking authority for pipeline safety. Under this authority, RSPA may issue regulations to address specific worker safety issues as they relate to the safe and environmentally sound transportation of gas by pipeline. It is not necessary that RSPA "demonstrate" that current regulations are inadequate before issuing specific safety regulations.

Petitioner urges RSPA to revise the worker safety provision, stating that worker safety issues should not be addressed specifically, but instead that the issue be addressed generically. This suggestion goes beyond the scope of the NPRM and is not adopted.

RSPA disagrees with Petitioner's claim that compliance with this provision would entail enormous costs. RSPA prepared a Regulatory Evaluation which concluded that the final rule would have a positive cost/benefit ratio. Costs of complying with the final rule are small because most operators need only make emergency rescue equipment available when needed at the trench excavation. RSPA did not receive any comments to the preliminary regulatory evaluation that accompanied the NPRM and A.G.A. has not provided detailed information about increased costs. Furthermore, since most operators regularly train employees in industrial safety, and currently include operator safety as an integral part of their O&M plan, RSPA believes the costs of revising the O&M plan to include worker safety would not be increased significantly.

Accordingly, Petitioner's request to change sections 192.605(b)(9) and 195.402(c)(14) is denied.

### *IV. Extent of Requirement to Address Malfunctions and Other Deviations During Abnormal Operations*

In its petition, A.G.A. also requested that RSPA should remove the requirement in 49 CFR 192.605(c)(1)(v) requiring that an operator address abnormal operations in its O&M manual. The rule states as follows:

(c) *Abnormal operation.* For transmission lines, the manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:

(1) Responding to, investigating, and correcting the cause of:

\* \* \* \* \*

(v) Any other malfunction of a component, deviation from normal operation, or personnel error which may result in a hazard to persons or property.

Petitioner asserts that this language is confusing and could be interpreted to require operators to have written procedures in their O&M manual describing how to respond to unforeseeable malfunctions, deviations from normal operation, or personnel error. Petitioner requests that RSPA clarify the regulation to indicate that an operator need only include written procedures for "foreseeable" malfunctions when design limits have been exceeded.

The operator is required to prepare procedures when operating design limits have been exceeded, such as limits of pressure, flow, and temperature that indicate an abnormal condition which should be investigated and corrected to avoid approaching the strength limits of the system and the potential for failure. Pipeline systems vary, and an operator must be able to provide procedures to apply to the particular requirements of its system. The operator must plan for potential foreseeable causes of abnormal pipeline operations.

The identical rule for hazardous liquids, 49 CFR 195.402(d)(1)(v) has been in effect since 1979 (44 FR 41197, July 16, 1979). Regulated hazardous liquid pipeline operators have not been confused by the regulation, apparently assuming correctly that the rule only applies to foreseeable events. However, to avoid confusion, RSPA is amending the final rule to add the word "foreseeable" in section 192.605(c)(1)(v).

### *V. Extent of Requirement That Operators of Natural Gas Distribution Systems Prepare Procedures for Addressing Abnormal Operations*

Petitioner asserts that the final rule should exempt natural gas distribution systems from the requirement to have procedures for addressing abnormal operations on its transmission lines as described in 49 CFR 192.605(c) of the final rule. A.G.A. contends that many small diameter and short distance pipelines "have little similarity" to interstate transmission systems, but are regulated as transmission lines only because they operate at above 20 percent of the pipe's specified minimum yield strength (SMYS). Petitioner stated that compliance with the regulation would require separate abnormal operations plans for each separate section of pipe.

RSPA agrees with Petitioner that natural gas transmission lines operated by distribution operators in connection with their distribution systems should be exempt from the requirement to have procedures that address abnormal operations. This was the intent of the final rule. The preamble to the final rule stated that "[d]istribution system operators are not required to prepare a manual for abnormal conditions because they normally operate distribution pipelines at lower pressures than transmission pipelines \* \* \* due to the dangers involved in operating in populated areas, most unusual operating conditions would be considered by the distribution system operator to be an emergency until the condition is resolved or corrected." (59 FR 6582; February 11, 1994.) Accordingly, RSPA is amending the final rule to clarify that an operator of a high-pressure or low-pressure distribution system, as defined in 49 CFR 192.3, is exempt from the requirement to prepare a manual for abnormal operations.

**Rulemaking Analyses**

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979) because it merely clarifies the content of a final rule and does not materially affect the substance of the final rule.

*Federalism Assessment*

This rule will not have substantial direct effects on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule only makes minor editorial changes to a previously issued rule. Therefore, in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987) RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

*Regulatory Flexibility Act*

There are very few small entities that operate pipelines affected by this rulemaking. To the extent that any small entity is affected, the affect is minimal because it does not impose additional requirements. Based on this

fact, I certify under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605; September 19, 1980) that this rule does not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 49 CFR Part 192**

Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, part 192 is amended to read as follows:

**PART 192—[AMENDED]**

1. The authority citation for part 192 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53.

2. In § 192.605, the introductory text of paragraph (b) is revised to read as follows:

**§ 192.605 Procedural manual for operations, maintenance, and emergencies.**  
\* \* \* \* \*

(b) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.  
\* \* \* \* \*

3. In § 192.605, paragraph (c)(1)(v) is revised, and a new paragraph (c)(5) is added to read as follows:

**§ 192.605 Procedural manual for operations, maintenance and emergencies.**  
\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(v) Any other foreseeable malfunction of a component, deviation from normal operation, or personnel error, which may result in a hazard to persons or property.  
\* \* \* \* \*

(5) The requirements of this paragraph (c) do not apply to natural gas distribution operators that are operating transmission lines in connection with their distribution system.

**D.K. Sharma,**  
*Administrator, Research and Special Programs Administration.*  
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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 280 and 285**

[Docket No. 950124026-5026-01; I.D. 100893B]

RIN 0648-AF74

**Bluefin Tuna Fisheries; Bluefin Tuna Statistical Document**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to revise the regulations governing the bluefin tuna fisheries to: Require an appropriately completed, approved Bluefin Tuna Statistical Document (BSD) as a condition for import, export, or re-export of bluefin tuna into or from the United States; require a Federal permit for all dealers that import or export Pacific bluefin tuna; require preparation and submission of a biweekly report on imports and exports of Pacific bluefin tuna by permitted dealers; revise specifications determining size classes of Atlantic bluefin tuna; and make minor amendments to clarify the regulations. This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), to improve management and monitoring of the U.S. bluefin tuna fisheries, to facilitate enforcement, and to enhance collection of data in order to improve assessment of the environmental and economic impacts of the fisheries.

**EFFECTIVE DATE:** April 17, 1995.

**ADDRESSES:** Copies of the Final Environmental Assessment/ Regulatory Impact Review, are available from Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirement contained in this rule should be sent to Richard H. Schaefer and to the Office of Management and Budget (OMB), Paperwork Reduction Project (0648-0040; 0648-0148; 0648-0202; 0648-0239), Attention: NOAA Desk Officer, Washington, DC 20503.

Copies of the ICCAT BSD and revised Fisheries Certificate of Origin (FCO) are also available from the Director, F/CM.