

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by adding paragraph (a)(1) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(1) *Alabama.*

(i) [Reserved]

(ii) Alabama Department of Environmental Management (ADEM) may implement and enforce alternative requirements in the form of title V permit terms and conditions for International Paper Prattville Mill, Prattville, Alabama, for subpart MM of this part — National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills. This action is contingent upon ADEM including, in title V permits, terms and conditions that are no less stringent than the Federal standard. In addition, the requirement applicable to the source remains the Federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

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DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 193**

[Docket No. RSPA-03-14456]

RIN 2137-AD80

Pipeline Safety: Liquefied Natural Gas Facilities; Clarifying and Updating Safety Standards

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

ACTION: Final rule; petition for reconsideration.

SUMMARY: In the *Federal Register* of March 10, 2004, RSPA published a final rule concerning liquefied natural gas (LNG) facilities. The final rule clarified that regulations governing the fire protection of LNG facilities apply to facilities in existence or under

construction as of March 31, 2000. The final rule also updated a reference to fire protection provisions of the National Fire Protection Association (NFPA) standard, NFPA 59A, from the 1996 edition to the 2001 edition of that standard. The American Gas Association submitted a petition for reconsideration of the final rule, requesting changes in the fire protection requirements. The present action responds to that petition and clarifies requirements that involve provisions of NFPA 59A.

DATES: This action takes effect August 11, 2004.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow by phone at 202-366-4559, by fax at 202-366-4566, by mail at U.S. Department of Transportation, 400 7th St., SW., Washington, DC 20590, or by e-mail at buck.furrow@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:**Background**

On March 10, 2004, RSPA published a final rule that, *inter alia*, amended regulations in 49 CFR part 193 related to the fire protection of LNG facilities used in gas pipeline transportation (69 FR 11330). An amendment to 49 CFR 193.2005 clarified that the fire protection requirements of part 193 (contained in § 193.2801, Fire protection) apply to LNG facilities existing on March 31, 2000. In addition, an amendment to § 193.2801 clarified which provisions of NFPA 59A, “Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)” were incorporated by reference. That amendment also provided an extended compliance time for actions to be taken regarding certain systems and personnel qualification. A separate amendment updated all part 193 references to the 1996 edition of NFPA 59A to the 2001 edition of that standard.

Petition for Reconsideration

By letter dated April 8, 2004, the American Gas Association, a trade association representing operators of LNG facilities, submitted a petition for reconsideration of the final rule as it relates to the fire protection requirements of § 193.2801. These requirements are as follows:

Section 193.2801 Fire protection.

Each operator must provide and maintain fire protection at LNG plants according to sections 9.1 through 9.7 and section 9.9 of NFPA 59A [2001 edition] * * *. However, LNG plants existing on March 31, 2000, need not comply with provisions on emergency shutdown systems, water delivery

systems, detection systems, and personnel qualification and training until September 12, 2005.

The following is our response to the petition:

As a general issue, the petitioner argues that there has not been sufficient opportunity to discuss retroactive application of sections 9.1 through 9.7 and section 9.9 of NFPA 59A. To demonstrate this point, the petitioner states that the retroactive issue was left open at the Technical Pipeline Safety Standards Committee (TPSSC) meeting on July 31, 2003, and that a workshop to clarify retroactive requirements, which was announced at the meeting, was not held.

On the contrary, the TPSSC did complete its consideration of the proposal to apply NFPA 59A (2001 edition) fire protection requirements retroactively. It voted unanimously that the requirements should apply only to new LNG facilities (transcript p. 76 (motion to apply only to new facilities clarified) and p. 86 (motion passed with unrelated amendments)). We regret that the demand for expeditious action on the final rule did not allow time for the workshop. However, we believe the public proceedings that led to the final rule provided ample opportunity for operators to express their views on retroactivity consistent with applicable legal requirements.

The petitioner also makes four specific requests. The first is that we remove the requirement that operators of LNG plants existing on March 31, 2000, provide and maintain fire protection according to sections 9.1 through 9.7 and section 9.9 of NFPA 59A (2001 edition). In support of this request, the petitioner contends that requiring operators to upgrade or retrofit their existing detection systems to meet the requirements of NFPA 72, National Fire Alarm Code, 1999 edition, regardless of existing conditions, is impracticable and could result in unnecessary equipment or system changes.

Under the final rule, such arbitrary upgrading or retrofitting is not mandatory. Compliance with NFPA 72 is governed by section 9.3.4 of NFPA 59A, which reads:

The detection systems determined from the evaluation in 9.1.2 shall be designed, installed, and maintained in accordance with NFPA 72, National Fire Alarm Code, or NFPA 1221, Standard for the Installation, Maintenance, and Use of Public Fire Service Communication Systems, as applicable.

Under section 9.1.2, operators have to determine the type, quantity, and location of equipment necessary for the

detection and control of certain fires, leaks, and spills “by an evaluation based on sound fire protection engineering principles, analysis of local conditions, hazards within the facility, and exposure to or from other property.” Reading sections 9.1.2 and 9.3.4 together, NFPA 72 requirements do not apply regardless of existing conditions, but in light of them. If an operator determines from the evaluation required by section 9.1.2 that the type, quantity, and location of existing detection equipment are adequate for fire protection, no upgrading or retrofitting is required. Also, even if an operator determines that the type, quantity, or location of existing detection equipment is inadequate for fire protection, only detection equipment that is changed or added would have to meet applicable NFPA 72 requirements. In view of this clarification, we do not consider the upgrading issue a sufficient reason to grant the first request.

As further justification for the first request, the petitioner asserts that to meet the training requirements of NFPA 72, many operators may contract out the maintenance of detection equipment. Doing so, the petitioner speculates, could degrade the quality of maintenance since only operators have firsthand experience and understanding of the equipment. We addressed this potential problem in the final rule by allowing operators until September 12, 2005, to train plant personnel according to NFPA 72 requirements. Since the petitioner’s second request accedes to

this deadline for training, we do not consider the training issue a sufficient reason to grant the first request.

The petitioner’s concern that operators may have to contract out the maintenance of detection equipment is apparently based on its belief that NFPA 72 requires the use of certified personnel for this maintenance. However, NFPA 72 does not mandate the use of certified personnel. Rather section 7–1.2.2 of NFPA 72 (1999 edition) requires that service personnel be qualified and experienced in the inspection, testing, and maintenance of fire alarm systems. While individuals certified by various organizations are included in examples of qualified personnel, individuals may be qualified otherwise. For example, personnel who meet the qualification requirements of 49 CFR 193.2707, “Operations and maintenance,” for fire alarm system maintenance at LNG plants, would, in our view, also be qualified for that function under NFPA 72.

The second request is that we limit the September 12, 2005, compliance deadline to reviewing equipment or systems and making required changes to training and procedures. The basis of this request is the petitioner’s belief that operators are required to change existing equipment or systems “regardless of whether it is appropriate.” The petitioner argues that although this is not practicable, an engineering review and changes to training and procedures, once clarified, can be completed by the September 12, 2005, deadline. As clarified above, operators are required to

make equipment or system changes only as determined by an evaluation of existing conditions. Given this clarification and because the petition does not specify which requirements related to training and procedures are considered unclear, we have not granted the second request.

The third request is that we establish September 12, 2006, as the deadline for making equipment or system changes. The petitioner argues that for planning and budgeting reasons, operators are unlikely to complete the evaluation of existing equipment or systems and make all necessary changes before the September 12, 2005, deadline. Given the clarification above of what changes, if any, may be needed, there is insufficient evidence that operators will need additional compliance time for changes. Even if additional time is needed, 1 year may not be appropriate in all cases. Under these circumstances, we think the need to establish September 12, 2006, as the deadline for making equipment or system changes is unclear. Thus the third request is denied.

The last request is that we hold a public meeting on the petition. Since this response clarifies requirements that are central to the petition, we do not believe a public meeting on the petition is necessary.

Issued in Washington, DC, on July 2, 2004.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.
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