

while in captivity. While there is no known satisfactory explanatory biological mechanism linking beriberi or malnutrition and subsequent chronic heart disease, the examination data from the current study provides epidemiological evidence to suggest there is a connection between conditions during captivity and the later development of ischemic heart disease. According to the study, the reporting of edema in prison camp indicates a specific nutritional deficiency, beriberi, and the location of edema in the feet, ankles and legs is presumably related to beriberi heart disease in prison camp which is caused by thiamine deficiency.

After reviewing this study the Secretary has determined, in keeping with the intent of Congress to provide a presumption of service connection for former prisoners of war who have diseases which result from dietary inadequacies or unsanitary conditions and for which service connection may be difficult to establish, that the term beriberi heart disease found at 38 U.S.C. 1112(b)(2) includes ischemic heart disease if the former prisoner of war suffered localized edema during captivity. We have amended 38 CFR 3.309(c) accordingly.

This amendment is effective August 24, 1993, the date of the Secretary's decision. Since this amendment is an interpretation of existing law, publication as a proposal is not required and the amendment is being issued as a final rule.

Because no notice of proposed rulemaking is required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. et seq.). Further, the rule will not directly affect any small entities; only VA beneficiaries could be directly affected.

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866 of September 30, 1993, entitled Regulatory Planning and Review.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved June 27, 1994.

Jesse Brown,
Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.309 [Amended]

2. In § 3.309(c), add a note at the end of the paragraph preceding the authority citation to read as follows:

Note: For purposes of this section, the term *beriberi heart disease* includes ischemic heart disease in a former prisoner of war who had experienced localized edema during captivity.

[FR Doc. 94-16624 Filed 7-11-94; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS-117; Amdt. 195-53]

RIN 2137-AB86

Transportation of Hazardous Liquids at 20 Percent or Less of Specified Minimum Yield Strength

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

ACTION: Final Rule.

SUMMARY: RSPA's hazardous liquid pipeline safety regulations do not apply to steel pipelines that operate at 20 percent or less of specified minimum yield strength (SMYS). This final rule extends the regulations to three groups of these pipelines: pipelines that transport highly volatile liquids; pipelines or pipeline segments in populated areas, and pipelines or pipeline segments in navigable waterways. Accidents have shown that regulating these pipelines or pipeline segments would be in the interest of public safety. Moreover, the Pipeline Safety Act of 1992 provides that DOT may not exclude hazardous liquid pipelines from regulation based solely on operation at low internal stress. The final rule responds to this statutory

prohibition and will reduce the risk that hazardous liquid pipelines present to public safety and the environment.

EFFECTIVE DATE: August 11, 1994.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366-2392, regarding the subject matter of this final rule. Contact the Dockets Unit, (202) 366-4453, for copies of the final rule or other docket material. Contact the Transportation Safety Institute, Pipeline Safety Division, 6500 South MacArthur Boulevard, Oklahoma City, OK 73125, (405) 680-4643, for a copy of 49 CFR part 195.

SUPPLEMENTARY INFORMATION:

I. Background

RSPA's hazardous liquid pipeline safety regulations do not apply to pipelines operating at a stress level of 20 percent or less of SMYS (hereafter "low-stress pipelines") (see 49 CFR 195.1(b)(3)). DOT excluded these pipelines from part 195 when it first issued the regulations (34 FR 15473; October 4, 1969). However, serious accidents have occurred on low-stress pipelines, suggesting that this blanket exclusion is no longer in the interest of public safety. Moreover, Section 206 of the Pipeline Safety Act of 1992 (PSA) (Pub. L. 102-508; October 24, 1992), amended § 203(b) of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPESA) (49 App. U.S.C. 2002(b)) to provide that "[i]n exercising any discretion under this Act, the Secretary shall not provide an exception to regulation under this Act for any pipeline facility solely on the basis of the fact that such pipeline facility operates at low internal stress."

On October 31, 1990, RSPA published an advance notice of proposed rulemaking on low-stress pipelines (55 FR 45822). The notice described accidents and rulemaking recommendations.

We analyzed data received in response to that notice to learn the benefits and costs of regulating low-stress pipelines. The analysis showed that many operators could face costs disproportionate to benefits if RSPA regulated all low-stress pipelines subject to the HLPESA. So we focused on those low-stress pipelines that pose a higher risk to people and the environment. We identified the commodity in transportation and the location of the pipeline as significant risk factors.

RSPA then published a notice of proposed rulemaking (NPRM) (58 FR 12213; March 3, 1993) that addressed these risk factors. The NPRM proposed to apply the safety standards in part 195 and the drug testing rules in 49 CFR part

199 to low-stress pipelines that transport highly volatile liquids (HVL), traverse populated areas, or traverse navigable waterways. These pipelines were targeted because failures of HVL pipelines usually result in more deaths and injuries than other pipeline failures, and failures in populated areas and navigable waterways generally result in more damages to people and the environment. Furthermore, the risk of outside force damage, a major cause of pipeline accidents, is greater in populated areas and navigable waterways, making failures there somewhat more likely.

The proposed rules would address the statutory restriction (quoted above) on administrative discretion in regulating hazardous liquid pipelines. The proposed rules also would respond to the Oil Pollution Act of 1990 (Pub. L. 101-380), which requires DOT to regulate oil pipelines to prevent pollution of navigable waters.

The NPRM proposed regulating four kinds of pipelines operating at 20 percent or less of SMYS: gathering lines, trunk lines, inter-facility lines, and delivery lines. Unaffected were pipelines that part 195 does not cover for a reason besides low operating stress. For example, the NPRM did not propose regulating low-stress rural gathering lines. Part 195 does not apply to petroleum gathering lines in rural areas, regardless of the pipeline's operating stress level (see § 195.1(b)(4)). Also, with regard to low-stress pipelines that do not transport HVL, the proposed rules did not affect pipelines or pipeline segments that lie outside populated areas or navigable waterways. However, controls or equipment on excepted segments that are necessary for the safe operation of pipeline segments inside populated areas or navigable waterways (e.g., pressure controls) would have to meet part 195 requirements.

II. Response to Comments

A. Introduction

This section of the preamble summarizes and discusses the major written comments RSPA received on the proposed rules. Comments related to the draft economic evaluation of costs and benefits are discussed in the Final Regulatory Evaluation, which is in the docket.

B. Extent and Nature of Comments

The NPRM requested comments by May 3, 1993. RSPA received 13 written comments. The comments came from seven pipeline operators, one pipeline trade association (the American Petroleum Institute (API)), three state

pipeline safety agencies, one federal agency (the National Transportation Safety Board (NTSB)), and one public interest organization (the Natural Resources Defense Council (NRDC)).

NTSB, two state agencies, and one operator voiced general support for the NPRM. The rest of the commenters directed their remarks to specific issues. Those issues are discussed below.

C. Rural Pipelines

NRDC and a state agency suggested that RSPA should not continue to exempt non-HVL low-stress pipelines in rural areas from part 195. These commenters argued that people and the environment in rural areas deserve the same protection as people and the environment in populated areas. They also said that serious accidents have occurred in rural areas, and that low stress is not necessarily an indicator of low risk.

Although RSPA appreciates these commenters' concerns, we have decided not to expand the present rulemaking to include the regulation of additional low-stress pipelines in rural areas. However, the need to regulate rural low-stress pipelines not covered by the present rulemaking will be considered in upcoming proceedings.

Apart from production lines (which are not subject to the HLPSPA), most low-stress pipelines in rural areas probably are gathering lines. Until passage of the PSA, rural gathering lines were not subject to regulation under the HLPSPA. However, the PSA enlarged RSPA's regulatory authority under the HLPSPA to include, with certain exceptions, those rural gathering lines that warrant regulation based on location and other risk factors. As required by Section 208 of the PSA, RSPA will consider regulation of those lines in a future notice of proposed rulemaking.

In addition, we will consider the need to regulate rural low-stress pipelines that are not gathering lines principally on the basis of the risk the low-stress lines pose to the environment. Through response planning in cooperation with other federal and state agencies under the Oil Pollution Act, we are developing a better concept of what constitutes an environmentally-sensitive area for purposes of pipeline environmental regulation. This planning should provide the groundwork both for the future notice of proposed rulemaking on rural gathering lines and for a rulemaking on other rural low-stress pipelines.

D. Adequacy of NPRM

API commented on the impact of the proposed rules on inter-facility lines

and delivery lines. It said the proposed rules would significantly affect non-pipeline companies, such as refineries, petrochemical plants, and terminals. But, according to API, these companies may not have been aware of the NPRM. API advised RSPA to publish a separate NPRM directed at inter-facility and delivery lines, with at least a 6-month comment period.

RSPA does not agree that another rulemaking notice is needed.

The published NPRM clearly discussed the proposed applicability of part 195 to inter-facility lines and delivery lines. The NPRM gave all interested persons, including non-pipeline companies, an adequate opportunity to comment on the proposed extension of part 195 to cover these low-stress pipelines. In addition, some non-pipeline companies were aware of the NPRM, because representatives of refineries submitted comments. Other non-pipeline companies should have been aware that RSPA was considering the need to regulate low-stress pipelines. As stated above, RSPA published an advance notice of proposed rulemaking on low-stress pipelines. Also, we specifically invited representatives of the chemical, refining, and terminal industries to attend a meeting on low-stress pipelines (56 FR 23538; May 22, 1991). At that meeting, RSPA staff described all low-stress pipelines excluded from part 195.

E. Economically Marginal Gathering Lines

The NPRM requested comment on whether economically marginal gathering lines (i.e., lines which have little profit) in populated areas should receive separate treatment under the final rules. One operator wanted to exclude from regulation petroleum gathering lines that operate at less than 5 percent of SMYS and transport mostly sediment and water. The operator said these lines present little or no risk, but the cost of regulation would be high because of the large number of lines.

API and an operator said many low-stress pipelines in populated areas are associated with mature wells of diminishing production. These commenters argued regulation would accelerate the marginal economic status of the lines. They also suggested that more truck transportation would follow, with greater risk to the public. The operator particularly asked RSPA not to regulate low-stress pipelines transporting crude oil that has a high flash point. These lines, the commenter said, do not present a high enough risk to public safety to make regulation cost-effective.

API commented that RSPA should apply just a few regulations to pipelines made economically marginal by depleted oil fields and low oil prices. It suggested that regulations applicable to leak detection would be enough. The remaining regulations could be waived, API said, based on evidence of negative economic impact and low risk to the area. An operator also suggested RSPA consider granting waivers for marginal systems based on evidence of a satisfactory safety program.

NTSB said regulation of a class of pipelines should be based solely on the threat to public safety and the environment.

An operator of economically marginal lines said that if safety is the goal of regulation, then profitable and marginal lines should be treated alike.

To resolve the issue of economically marginal gathering lines, we looked at the number of lines involved, the burden of the final rule, and alternative transportation. The record shows that gathering lines in populated areas comprise less than 10 percent of low-stress pipelines subject to the final rule. Based on the comments, we believe only a small fraction of this number is economically marginal, transporting small volumes of oil from older, declining wells. These pipelines would be subject to the part 195 regulations, which, on the whole, parallel the industry standards in the American Society of Mechanical Engineers' B31.4 code, *Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols*. The compliance burden, therefore, would be similar to the burden of meeting the minimum standards the pipeline industry has set for itself. Alternative rail or truck transportation, although perhaps more expensive, is generally available to replace any gathering line transportation that might be shut down. Thus, we do not believe regulation of economically marginal low-stress gathering lines will cause a significant hardship to much of the industry. Also, the potential safety and environmental risks of economically marginal gathering lines is probably higher than that of more profitable lines because of the increased incentive to save costs. Consequently, we decided not to include special provisions in part 195 for economically marginal low-stress gathering lines.

Nevertheless, consistent with API's comment and RSPA's statutory authority, we will consider requests for waiver of particular requirements. Any request should be based on evidence of significantly adverse economic impact,

low risk, and adequate operation and maintenance practices.

F. Compliance Time

1. Amount of Time

Proposed § 195.1(d) would have allowed operators of existing low-stress pipelines 1 year after publication of the final rule to comply with parts 195 and 199. However, the NPRM requested comment on whether 1 year would be enough time to prepare existing pipelines for compliance.

An operator said 1 year would not be enough unless RSPA excludes certain economically marginal gathering lines and accepts previous hydrostatic testing. Otherwise the operator said 2 years would be needed to establish an adequate compliance program. One operator said 1 year would be all right for HVL and trunk lines, but 3 years would be needed for other lines. Another operator recommended 3 to 5 years for low-stress pipelines that present a low risk because they carry crude oil with a high flash point. Still another operator said that because many distinct pipelines would be brought under the regulations (possibly 3,000), the minimum compliance period should be 5 years. API and an operator argued that 3, 4, or 5 years would be needed to carry out all the requirements.

NTSB argued that 1 year would be sufficient because many operators of low-stress pipelines have other pipelines that are subject to parts 195 and 199. Also, NTSB said compliance would mostly involve procedural changes. It further said written procedures and documentation are readily available for operators not already involved with parts 195 and 199. A state agency also said 1 year would be sufficient for operators to prepare for compliance.

In view of the diversity of conditions and importance of plans, procedures, and testing, RSPA agrees that many operators will need more than 1 year to complete the steps necessary for existing pipelines to meet parts 195 and 199. Of particular concern is the time needed to craft plans and procedures that address the individual conditions of the many distinct pipelines to which the final rule applies. However, operators should not need more than 90 days to learn about the new requirements and begin reporting accidents that might occur on low-stress pipelines. Also, within 90 days operators should be able to meet part 195 design, construction, and hydrostatic testing requirements on portions of existing pipelines that they replace, relocate, or otherwise change

after the effective date of the final rule. Therefore, final § 195.1(c) allows existing low-stress pipelines 2 years from today to comply with parts 195 and 199. However, accident reporting under subpart B of part 195 begins 90 days from today. Also, replacements, relocations, and other changes made to existing pipelines on or after 90 days from today must meet the design, construction, and hydrostatic testing requirements of part 195 before operation.

Note that the allowable compliance time for existing low-stress pipelines is stated in final § 195.1(c), instead of § 195.1(d) as proposed. We made this change because under existing § 195.1(c), the deadline has passed for carbon dioxide pipelines to comply with part 195 (July 12, 1992). Accordingly, the compliance time for carbon dioxide pipelines is being removed from § 195.1(c). This change makes § 195.1(c) available to state the compliance time for low-stress pipelines.

G. Populated Area

RSPA proposed to define "populated area" as "any onshore area other than a rural area." Section 195.2 defines "rural area" as "outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, or community development." So a populated area would be an onshore area inside such political, residential, or commercial area.

One operator suggested we exclude industrial areas from the definition of populated area. Because of the lack of residential housing and associated small businesses and shopping centers in these areas, the operator said regulation would not increase safety. RSPA strongly disagrees, however, because the rules in parts 195 and 199 protect people at large, not just people in residential communities. Plant personnel and the environment in industrial areas are at risk from low-stress pipelines.

An operator asked if part 195 would apply to an entire line section between block valves if only part of the line section crosses a populated area. As previously explained, the pipeline segment inside the populated area and any equipment and controls located elsewhere that are necessary for operation of the segment would have to meet part 195.

Part 195 currently uses the term "populated area" in §§ 195.234(e)(5), 195.260(c), and 195.306(b)(1) and (c)(1). We did not intend that the definition of

"populated area" proposed in the NPRM affect these rules. We proposed the definition merely to clarify the proposed applicability of part 195 to low-stress pipelines. Therefore, the final rule does not contain a definition of populated area. Instead, final § 195.1(b)(3), which defines the applicability of part 195 to low-stress pipelines, incorporates the substance of the proposed definition.

For similar reasons, we revised § 195.1(b)(3) to include the substance of the proposed definition of "navigable waterway." Section 195.412(b) uses this term, but we intended the proposed definition to clarify only the proposed applicability of part 195 to low-stress pipelines.

H. Definition of Highly Volatile Liquid

Section 195.2 defines a "highly volatile liquid" as a hazardous liquid that will form a vapor cloud when released to the atmosphere and that has a vapor pressure exceeding 276 kPa (40 psia) at 37.8°C (100°F). A "hazardous liquid" is defined as petroleum, petroleum products, or anhydrous ammonia.

One commenter thought RSPA should amend the current definition of "highly volatile liquid" to exclude gas saturated petroleum/water mixtures if the liquid remaining after release of the gas has a vapor pressure of 40 psia or less at 100°F. However, the definition does not cover such mixtures. The deciding factors in the definition are (1) the vapor pressure of the hazardous liquid in transportation; and (2) whether that liquid will evaporate into a vapor cloud upon release to the atmosphere. In the commenter's example, the gas in the mixture is not relevant in determining the vapor pressure of the hazardous liquid in transportation. Since the mixture without the gas has a vapor pressure of 40 psia or less, it is not a highly volatile liquid.

I. Hydrostatic Testing

The NPRM proposed to require that operators hydrostatically test new low-stress pipelines and existing low-stress pipelines that are replaced, relocated, or otherwise changed. In addition, the NPRM proposed that within 1 year after publication of the final rule, existing low-stress pipelines transporting HVL must have been hydrostatically tested under subpart E of part 195 or not operate above 80 percent of a previous qualified test or operating pressure (proposed § 195.302(c)).

API suggested that RSPA allow 2 years instead of 1 year to complete the testing of existing HVL low-stress pipelines. Considering the total effort

companies will need to meet parts 195 and 199, RSPA agrees that 2 years is more reasonable than 1 year to prepare for compliance. As stated above, final § 195.1(c) provides a 2-year compliance time for existing low-stress pipelines. This compliance time applies to testing existing HVL low-stress pipelines under subpart E of part 195. Therefore, a compliance time is not separately stated in final § 195.302(c).

Except for low-stress pipelines that are replaced, relocated, or otherwise changed, the NPRM did not propose to require operators to hydrostatically test existing non-HVL low-stress pipelines. Furthermore, the NPRM explained that non-HVL low-stress pipelines were not subject to the hydrostatic testing proposal in Docket PS-121 (56 FR 23538), which affected many older existing hazardous liquid pipelines.

However, under proposed § 195.406(a)(6), any non-HVL low-stress pipeline not tested to subpart E standards could not be operated at more than "80 percent of the test pressure or 100 percent of the highest operating pressure to which the pipeline was subjected for four or more continuous hours that can be demonstrated by recording charts or logs made at the time the test or operations were conducted." One operator suggested that proposed § 195.406(a)(6) would have the effect of requiring hydrostatic testing of existing non-HVL low-stress pipelines. Testing could be necessary if the requisite documentation were not available, or planned operations were not consistent with prior documented test or operating pressures. RSPA did not intend this result. In fact, we proposed § 195.406(a)(6) to assure that non-HVL low-stress pipelines could continue to operate without hydrostatic testing under subpart E. Upon further consideration, RSPA believes proposed § 195.406(a)(6) is unnecessary for that purpose, since § 195.302 clearly states which pipelines are subject to testing. So we have not adopted proposed § 195.406(a)(6) in the final rule.

Also, § 195.406(a)(5) covers the substance of proposed § 195.406(a)(7), concerning the operating pressure of HVL low-stress pipelines not tested to subpart E. Therefore, we have not adopted proposed § 195.406(a)(7) in the final rule.

One operator thought the proposed rules did not clearly state the proposed exclusion of existing non-HVL low-stress pipelines from hydrostatic testing requirements. RSPA agrees that subpart E should clearly state the applicability of testing requirements to low-stress pipelines. Thus, we revised existing § 195.302, General requirements, to

clarify the exception of non-HVL low-stress pipelines from testing under subpart E.

J. Pneumatic Testing

The NPRM requested comment on whether pneumatic testing should be allowed as an alternative to hydrostatic testing. API and a state agency favored pneumatic testing as an alternative.

Three operators and a state agency encouraged RSPA to allow pneumatic testing as an alternative to hydrostatic testing. They pointed out that pneumatic testing is permissible for low-stress pipelines in petroleum service under the ASME B31.4 Code (section 437.4.3; 1989 edition). Two of these operators also favored pneumatic testing because it would eliminate the need to collect and treat test water.

One operator saw little advantage in pneumatically testing new low-stress pipelines, because the cost of waste water disposal is not high for new lines. Two operators thought pneumatic testing would be hazardous for existing low-stress pipelines because of the potential to mix hydrocarbons and air inside the pipeline.

Part 195 now permits pneumatic testing as an alternative to hydrostatic testing (§ 195.306(c)) for carbon dioxide pipelines. Also, RSPA's gas pipeline safety standards allow pneumatic testing as an alternative to hydrostatic testing (49 CFR 192.503). In view of these standards, the environmental advantages of pneumatic testing, and the acceptability of pneumatic testing under the ASME B31.4 code, we believe subpart E of part 195 should allow operators the option of pneumatically testing low-stress pipelines. Therefore, the final rule amends § 195.306 to allow pneumatic testing as an alternative to hydrostatic testing on low-stress pipelines.

RSPA recognizes that a mixture of air and residual hydrocarbons could create a potential hazard if operators pneumatically test an existing low-stress pipeline with air instead of inert gas. However, this risk has not been a significant safety problem for gas pipelines under 49 CFR part 192. It is common practice for operators to use proper precautions if air is the test medium.

K. Environmentally Sensitive Areas

As stated in the NPRM, we have deferred proposing to regulate non-HVL low-stress pipelines in rural "environmentally sensitive areas" because we have not yet developed a suitable definition of "environmentally sensitive area." We also need time to learn the extent to which pipeline spills

affect such areas. Although the definition of "environmentally sensitive area" in the oil spill response plan regulations (49 CFR part 194) has been used for planning purposes, we believe that definition is too broad to use under part 195. A definition of "environmentally sensitive area" under part 195 must be specific enough to distinguish pipelines and segments of pipeline that are subject to the regulations.

As required by § 202 of the PSA, RSPA has scheduled publication of a notice of proposed rulemaking to define environmentally sensitive areas, high density population areas, and navigable waterways. (See the "Semiannual Regulatory Agenda" at 59 FR 20662; April 25, 1994). We also intend to propose, as required by the PSA, to require all operators of hazardous liquid pipelines (including low-stress pipelines) to identify and inventory their pipelines located in those areas and waterways.

NRDC commented that there is ample evidence of pipeline damage in rural environmentally sensitive areas outside navigable waterways, so RSPA should not postpone regulation of low-stress pipelines in those areas. NRDC suggested that RSPA use a broad definition of environmentally sensitive area for purposes of regulating low-stress pipelines, pending adoption of a definition required by the PSA. RSPA has not expanded the final rule to cover low-stress pipelines in environmentally sensitive areas outside the proposed areas of regulation, because the NPRM did not propose regulation of those pipelines at this time. However, we agree with NRDC's concerns about environmental risks, and we will consider those concerns in future rulemaking proceedings on rural low-stress pipelines. As mentioned above, our increased understanding of environmentally sensitive area in the pipeline context should provide a basis for future notices of proposed rulemaking on rural gathering lines and other rural low-stress pipelines.

One operator thought RSPA should postpone the regulation of low-stress pipelines entirely until it proposes regulations for non-HVL low-stress pipelines in rural environmentally sensitive areas. This operator said additional work and effort could be avoided if it could identify pipelines in environmentally sensitive areas before establishing a compliance program for part 195. The commenter, however, did not address the potential loss of benefits that would result if regulation of low-stress pipelines were deferred pending decisions on environmentally sensitive

areas. Nevertheless, RSPA believes that once compliance programs are in place, extending the programs to cover additional pipeline segments, if required, should not be too difficult. Furthermore, there is nothing to prevent an operator from bringing all segments of a pipeline into compliance with part 195 and immediately achieving the benefits.

L. Single Public Thoroughfare

In the NPRM (at 12215), RSPA mentioned that "intra-facility piping connecting adjacent facilities separated by navigable waterways or separated by third party property other than single public thoroughfares in populated areas would be subject to the regulations." A state agency and an operator asked us to clarify this single-public-thoroughfare exception.

The intra-facility piping mentioned in the NPRM is functionally equivalent to in-plant piping, which is excluded from regulation under § 195.1(b)(6). Essentially, intra-facility piping is transfer piping used for plant processes. However, plants may be divided by a single public thoroughfare, and transfer piping crosses the thoroughfare. A public thoroughfare includes any road, from a country lane to an interstate highway, but not a railroad or navigable waterway. Because the operating conditions of transfer piping that crosses such thoroughfares are comparable in most respects to those of other in-plant piping, RSPA considers thoroughfare crossings to be in-plant piping. This interpretation of § 195.1(b)(6) is in effect now. We will apply it to low-stress pipelines under this final rule. The thoroughfare exception does not apply to inter-facility lines or delivery lines, because these lines are different from in-plant piping.

One commenter, representing a refining department, suggested that plant transfer piping that crosses property other than a thoroughfare right-of-way, such as industrial property, should also qualify as in-plant piping under § 195.1(b)(6). This commenter also suggested that RSPA exclude inter-facility lines in industrial areas from regulation. Neither comment was adopted. We addressed the need to regulate low-stress pipelines in industrial areas under the subheading "G. Populated Areas" supra.

M. Offshore Pipelines

One operator commented that the NPRM lacked justification for the proposed regulation of offshore low-stress pipelines. RSPA disagrees because the accident consequences

discussed in the NPRM and the advance notice of proposed rulemaking could occur offshore. Also, the NPRM discussed the need to prevent pollution of navigable waterways, which includes offshore areas. In the final rule, § 195.1(b)(3) clarifies the coverage of offshore low-stress pipelines.

N. Drug Testing

One refinery operator suggested that RSPA exempt non-pipeline companies from part 199, if they have a comparable drug program and few low-stress pipelines. This commenter's primary concern was the cost of administering two separate anti-drug programs, the company's own program and another to satisfy part 199. RSPA believes this commenter may have overestimated the burden of compliance with part 199. Operators with comparable programs need not begin a separate part 199 program. They could modify their present programs as necessary to meet part 199 standards. Separate plans would not be required, although the parts of a single plan intended to meet part 199 would have to be clear and distinct from separate company requirements. Separate tests and analyses would be required only if the company's program required testing for drugs not covered by part 199. Considering the savings in compliance costs for operators with comparable programs and the continuing concern that illegal drug use may adversely affect the safe operation of pipelines, we did not adopt the refinery operator's comment.

O. Marine Terminal Piping

One operator pointed out that the US Coast Guard already regulates certain low-stress pipelines at marine terminals. This commenter recommended that RSPA continue to exempt these pipelines from part 195. Alternatively, the operator suggested RSPA establish a jurisdictional boundary with the Coast Guard to avoid duplication of agency efforts. A boundary, said the operator, also would eliminate the confusion over which DOT regulations apply to low-stress pipelines at marine terminals.

In port areas, RSPA and the US Coast Guard have independent regulatory missions, as assigned by federal statutes. So, hazardous liquid pipelines in port areas come under a combination of RSPA and Coast Guard regulations. At present, we know of no conflicts or undue burdens created by these separate regulatory programs. If such difficulties surface with respect to low-stress pipelines, we will work with the Coast Guard to minimize their impact.

P. Miscellaneous Clarifications**1. Pipelines Subject to Regulations**

Commenting on low-stress pipelines that cross navigable waterways in rural areas, API and an operator suggested that the final rule clarify how much of the entire pipeline the regulations cover. The operator thought only that part of the pipeline that actually crosses the waterway should be covered.

As stated above, for non-HVL low-stress pipelines, we intended to apply the regulations only to that part of the pipeline in the populated area or navigable waterway. Final § 195.1(b)(3) clarifies this intended application by including "or pipeline segments" immediately after "pipelines."

One operator thought the wording of the proposed compliance period (proposed § 195.1(d)) was inconsistent with the proposed revision of § 195.1(b)(3). The operator thought proposed § 195.1(d) implied that operators of non-HVL low-stress pipelines located outside populated areas and navigable waterways would have to comply with the regulations within 1 year. To avoid this misconception, we changed proposed § 195.1(d) (now § 195.1(c)) to show that the compliance period applies only to existing low-stress pipelines covered by part 195. We also clarified the wording of proposed § 195.1(b)(3) to better identify low-stress pipelines that part 195 does not cover.

2. Definition of Low-Stress Pipeline

Another operator suggested the final rule define the various kinds of low-stress pipelines covered. As stated above, the proposed rules affected several kinds of distinct pipelines that operate over their full length at 20 percent or less of SMYS, such as trunk lines and inter-facility lines. Nevertheless, since the final rules do not refer to low-stress pipelines by kind, there is no need to define each kind of low-stress pipeline the rules cover.

We have, however, added a definition of the term "low-stress pipeline" to § 195.2, based on the present wording of § 195.1(b)(3). The definition enabled us to clarify that a pipeline (in the sense of a continuing run of pipe and components used for transportation) must operate from beginning to end at 20 percent or less of SMYS to qualify as a low-stress pipeline. In drafting the final rules, the definition also allowed us to simplify the wording of several proposed rules.

3. Applicability of Design and Construction Standards

One proposed rule simplified by using the term "low-stress pipeline" was § 195.401(c)(5). The purpose of this proposed rule was to state that the design and construction requirements of part 195 would not apply to low-stress pipelines on which construction begins before the effective date of the final rule. Several commenters thought proposed § 195.401(c)(5) lacked clarity. So we revised it in the style of similar provisions of § 195.401(c).

In addition, one commenter pointed out that proposed § 195.401(c)(5) would not except existing low-stress pipelines from design and construction rules applicable to certain interstate and intrastate pipelines under §§ 195.401(c)(1)-(3). The final rule resolves this drafting problem by excluding low-stress pipelines from the interstate and intrastate designations under §§ 195.401(c)(1)-(3).

4. Cathodic Protection

Section 195.414, Cathodic protection, is amended in paragraphs (b) and (c). We separated requirements applicable to low-stress pipelines from existing requirements applicable to interstate and intrastate pipelines.

III. Advisory Committee

The Technical Hazardous Liquid Pipeline Safety Standards Committee is a federal advisory committee established under Section 204 of the HLPSSA (49 App. U.S.C. 2003). The committee advises DOT on the feasibility, reasonableness, and practicability of standards proposed under the HLPSSA.

On August 4, 1993, the Committee met in Washington, D.C. and discussed the NPRM. After due deliberation, the committee voted unanimously in favor of the proposed rules. The Committee's report and a transcript of the meeting are available for inspection in the docket.

IV. Regulatory Analyses and Notices**A. Paperwork Reduction Act**

This final rule will increase current information collection burdens under parts 195 and 199. The Office of Management and Budget (OMB) has approved this increased burden under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. Chap. 35). The OMB approval numbers are 2137-0047, 2137-0578, 2137-0579, and 2137-0587.

B. Executive Order 12866 and DOT Policies and Procedures

OMB considers this final rule a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). Therefore, OMB has reviewed this final rule. DOT considers this final rule significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

The comments RSPA received on the draft regulatory evaluation of costs and benefits are summarized and discussed in the final regulatory evaluation. The final evaluation, which shows that this final rule will result in net benefits to society, is available for review in the docket.

C. Regulatory Flexibility Act

Based on the facts available about the anticipated impact of this rulemaking action, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that the action will not have a significant economic impact on a substantial number of small entities. Few small entities operate low-stress pipelines subject to this final rule.

D. Executive Order 12612

RSPA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 (52 FR 41685). RSPA has determined that the action does not have sufficient federalism-implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 195 is amended as follows:

1. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2001 *et seq.*; 49 CFR 1.53.

2. In § 195.1, the introductory text of paragraph (b) is republished, paragraphs (b)(3) and (c) are revised to read as follows:

§ 195.1 Applicability.

* * * * *

(b) This part does not apply to—

* * * * *

(3) Transportation of non-HVL through low-stress pipelines, except for any pipeline or pipeline segment that is located—

(i) In an onshore area other than a rural area;

(ii) Offshore; or

(iii) In a waterway that is navigable in fact and currently used for commercial navigation;

(c) A low-stress pipeline to which this part applies that exists on July 12, 1994 need not comply with this part or part 199 of this chapter until July 12, 1996, except as follows:

- (1) Subpart B of this part applies beginning on October 10, 1994; and
 - (2) Any replacement, relocation, or other change made to existing pipelines after October 9, 1994 must comply with Subparts A and C through E of this part.
3. In § 195.2, the following definition is added:

§ 195.2 Definitions.

Low-stress pipeline means a hazardous liquid pipeline that is operated in its entirety at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe.

4. In § 195.302, paragraph (b) and the introductory text of paragraph (c) are revised to read as follows:

§ 195.302 General requirements.

(b) Except for pipelines converted under § 195.5, the following pipelines may be operated without pressure testing under this subpart:

- (1) Any hazardous liquid pipeline whose maximum operating pressure is established under § 195.406(a)(5) that is—
 - (i) An interstate pipeline constructed before January 8, 1971;
 - (ii) An interstate offshore gathering line constructed before August 1, 1977;
 - (iii) An intrastate pipeline constructed before October 21, 1985; or
 - (iv) A low-stress pipeline constructed before August 11, 1994 that transports HVL.
- (2) Any carbon dioxide pipeline constructed before July 12, 1991, that—
 - (i) Has its maximum operating pressure established under § 195.406(a)(5); or
 - (ii) Is located in a rural area as part of a production field distribution system.
- (3) Any low-stress pipeline constructed before August 11, 1994 that does not transport HVL.

(c) Except for pipelines that transport HVL onshore and low-stress pipelines, the following compliance deadlines apply to pipelines under paragraphs (b)(1) and (b)(2)(i) of this section that have not been pressure tested under this subpart:

5. In § 195.306, paragraph (a) is revised and paragraph (d) is added, to read as follows:

§ 195.306 Test medium.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, water must be used as the test medium.

(d) Air or inert gas may be used as the test medium in low-stress pipelines.

6. Section 195.401(c) is revised to read as follows:

§ 195.401 General requirements.

(c) Except as provided in § 195.5, no operator may operate any part of any of the following pipelines unless it was designed and constructed as required by this part:

- (1) An interstate pipeline, other than a low-stress pipeline, on which construction was begun after March 31, 1970, that transports hazardous liquid.
- (2) An interstate offshore gathering line, other than a low-stress pipeline, on which construction was begun after July 31, 1977, that transports hazardous liquid.
- (3) An intrastate pipeline, other than a low-stress pipeline, on which construction was begun after October 20, 1985, that transports hazardous liquid.
- (4) A pipeline on which construction was begun after July 11, 1991, that transports carbon dioxide.
- (5) A low-stress pipeline on which construction was begun after August 10, 1994.

8. Sections 195.414(b) and (c) are revised to read as follows:

§ 195.414 Cathodic protection.

(b) Each operator shall electrically inspect each bare hazardous liquid interstate pipeline, other than a low-stress pipeline, before April 1, 1975; each bare hazardous liquid intrastate pipeline, other than a low-stress pipeline, before October 20, 1990; each bare carbon dioxide pipeline before July 12, 1994; and each bare low-stress pipeline before July 12, 1996 to determine any areas in which active corrosion is taking place. The operator may not increase its established operating pressure on a section of bare pipeline until the section has been so electrically inspected. In any areas where active corrosion is found, the operator shall provide cathodic protection. Section 195.416(f) and (g) apply to all corroded pipe that is found.

(c) Each operator shall electrically inspect all breakout tank areas and buried pumping station piping on

hazardous liquid interstate pipelines, other than low-stress pipelines, before April 1, 1973; on hazardous liquid intrastate pipelines, other than low-stress pipelines, before October 20, 1988; on carbon dioxide pipelines before July 12, 1994; and on low-stress pipelines before July 12, 1996 as to the need for cathodic protection, and cathodic protection shall be provided where necessary.

Issued in Washington, DC, on July 5, 1994.
Ana Sol Gutiérrez,
Acting Administrator.
 [FR Doc. 94-16720 Filed 7-11-94; 8:45 am]
 BILLING CODE 4910-60-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 940414-4191; I.D. 032494B]

Marine Mammals; Subsistence Taking of Northern Fur Seals

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

ACTION: Final rule; fur seal subsistence harvest estimates on the Pribilof Islands.

SUMMARY: Pursuant to the regulations governing the subsistence taking of northern fur seals, NMFS is required to publish an estimate of the number of seals expected to be harvested in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands, AK. Additionally, this document amends existing fur seal regulations, making the subsistence harvest take estimates applicable for 3 years instead of 1 year. The intended effect of this rule is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof residents while minimizing negative effects on the seal population.

EFFECTIVE DATE: This final notice of subsistence need estimates is effective July 12, 1994, and applies to the harvest beginning June 23, 1994. The final rule that amends existing fur seal regulations, making the harvest estimates applicable for 3 years instead of 1 year, is effective August 11, 1994.

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