(e) A program for discipline for improper conduct;

(f) Timely reporting to appropriate Government officials of any improper action in connection with Government contracts; and

(g) Full cooperation with Government agencies responsible for investigation and correction.

Part 209—CONTRACTOR QUALIFICATIONS

4. Section 209.406–1 is proposed. to be amended by adding paragraphs (d) (1) and (2), to read as follows:

209.406–1 General.

(d) * * *

(1) Although the contractor has been convicted of a felony the debarring official may determine that debarment is not warranted where the contractor can demonstrate to the debarring official's complete satisfaction that—

(i) The contractor had effective review and control procedures in place at the time of the activity on which the felony conviction was based. The contractor's review and control systems may be considered effective if the activity on which the felony conviction was based was discovered by the contractor through the operation of the contractor's review and control systems;

(ii) The contractor made timely disclosure to the appropriate government agency of the improper activity;

(iii) The contractor cooperated fully with the government agency during the investigation and any Court or administrative action;

(iv) The contractor has paid or has agreed to pay all criminal and civil liability for the improper activity;

(v) The contractor has made or has agreed to make full restitution, including any investigatory and administrative costs incurred by the Government;

(vi) The contractor has dismissed or has agreed to dismiss all individuals responsible for the activity on which the conviction was based, or the contractor has taken such other disciplinary action as the debarring official determines to be appropriate; and

(vii) The contractor has implemented or agreed to implement remedial measures, including an ethics training program for all contractor personnel.

(2) Where the contractor did not have effective review and control procedures in place at the time the activity on which the conviction was based occurred, the debarring official may, with the approval of the Secretary concerned or the Assistant Secretary of Defense (A&L) in the case of the defense agencies, enter into an agreement with the contractor in lieu of debarring the contractor if the debarring official determines that such an agreement will protect the interests of the government. At a minimum in such an agreement, the contractor shall agree to—

(i) Subscribe to a written code of ethics in a form approved by the Department.

(ii) Institute an ethics training program for all contractor employees, without charge to the Department of Defense under any contract;

(iii) Institute review and control procedures, without charge to the Department of Defense under any contract;

(iv) Make full settlement of all criminal and civil liability arising out of the conviction; and

(v) Make full restitution to the Department of Defense, including any investigatory and administrative costs incurred by the Department of Defense.

5. Subpart 209.4 is proposed to be amended by adding after section 209.406–4 the following new section:

209.407–3 Procedures.

(d)(3) If the cause for suspension as listed in FAR 9.407–2 is based upon an indictment, the suspending official, in determining whether a suspension should be terminated, shall consider the factors set forth in § 209.406–1(d).

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–94; Notice 1]

Pipeline Operator Qualifications

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice, issued in advance of a proposed rule, invites public comment on the need for additional regulations or a certification program regarding the qualification of personnel who design, construct, operate, or maintain gas or hazardous liquid pipelines. The comments are to assist OPS in developing a final position on various recommendations from Congressional, Federal, and State sources.

DATE: Interested persons are invited to submit written comments in triplicate before May 7, 1987. Late filed comments will be considered if practical.

ADDRESS: Send comments to the Dockets Unit, Office of Hazardous Materia Transportation, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8426 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366–2392, regarding the subject matter of this notice, or Sandra Cureton, (202) 366–5046, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION:

I. Introduction

OPS is considering the need to develop additional regulations governing the training and qualification of persons that operators hire or otherwise engage to design, construct, operate, or maintain pipeline facilities used in the transportation of gas or hazardous liquids. These persons are hereafter referred to as "operator personnel." The regulations would apply to operators of gas pipeline systems (other than LNG facilities) subject to the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 U.S.C. 1671 *et seq.*) and the safety standards in 49 CFR Part 192, and to operators of hazardous liquid pipeline systems subject to the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001 *et seq.*) and the safety standards in 49 CFR Part 195. The regulations would be similar to the existing personnel qualifications and training requirements (cited in Part IV of this Notice), but enlarged in scope or detail to cover areas of personnel performance where deficiencies are recognized.

Alternatively, a program of licensing or certification of operator personnel is being considered. Such a program would require the development of standards for the skills, knowledge, or experience needed to perform various pipeline functions. Certificates would be awarded on the basis of tests or evaluation. Either OPS, State agencies, an approved private entity, or the pipeline operators themselves would grant the certificates. If OPS were to issue such certificates, DOT would probably need to acquire licensing authority through new legislation or amendments to the NGPSA and HLPSA.

In furtherance of these additional regulations or certification program, OPS also intends to develop more comprehensive requirements governing the operation and maintenance (O&M) plans of gas pipeline operators. Adequate O&M plans and procedures are needed to provide a sound basis for measuring qualifications. Written O&M plans for gas pipelines are now required by regulation (49 CFR 192.605) in accordance with Section 13 of the NGPSA (49 U.S.C. 1680), but the regulation is written in performance language rather than in specific language. In contrast, detailed regulations (49 CFR 195.402) governing the procedures that operators of hazardous liquid pipelines must follow for pipeline operation and maintenance are in effect under Section 210 of the HLPSA (49 U.S.C. 2009). OPS anticipates that the expanded O&M requirements for gas operators would parallel those in effect for operators of hazardous liquid pipelines, changed as appropriate for the different commodities and systems involved.

II. Background

Several sources have recommended that DOT take action to regulate the qualifications of pipeline operators, or operator personnel Most notably, the House Committee on Energy and Commerce in its August 11, 1986, report to accompany H.R. 4426 (a bill to authorize appropriations for 1987) recommended that the Department require the certification or licensing of *all* pipeline operators. (*Pipeline Safety Reauthorization*, H.R. Rep No. 99–779, Part 1, 99th Congress, 2d Sess., 7).

In making this recommendation the Committee noted that "[c] ertification of operators and inspectors is required for similar professions, such as boiler operators and inspectors," and that "pipelines are the only form of transportation that do not already require a licensed operator." The full Committee recommendation came after Congressman Philip R. Sharp, Chairman, Subcommittee on Fossil and Synthetic Fuels, had suggested in a May 8, 1986, letter to M. Cynthia Douglass, Administrator, Research and Special Programs Administration (RSPA), that a licensing program be started for pipeline operators.

Preceding the House Committee recommendation, in December 1982 the DOT Inspector General (IG) recommended in a memorandum to the RSPA Administrator that RSPA require licensing and certification of managers/superintendents of gas distribution systems. The IG said—

> State safety inspectors have indicated that operators of small municipal and privately owned gas distributors are frequently unaware of the federal safety standards or lack the know-how to implement them. Managers or superintendents of gas distribution systems should demonstrate a basic knowledge and understanding of federal safety standards before they are allowed to operate/manage the systems. Licensing or certification of natural gas distribution operators would improve compliance and enable state safety inspectors to provide greater coverage by reducing the amount of time expended in explaining standards to operators. Many states already require the operators of other utility systems to be licensed.

Because of the local nature of the problems seen by the State inspectors, RSPA has taken the position that any needed licensing or certification should be done by State governments and not the Federal government. This position was consistent with the policy of the NGPSA and the HLPSA, which permits States to add compatible safety regulations to the minimum Federal standards for intrastate pipelines when needed to meet local problems.

In addition, the Minnesota Commission on Pipeline Safety in a November 20, 1986, report recommended that OPS study the need for certification of pipeline design and construction personnel. OPS opened this issue to public discussion along with various other proposals in an advance notice of proposed rulemaking published in the **Federal Register** on February 11, 1987. (52 FR 4361).

An alternative approach to government licensing or certification of operator personnel was recommended in 1986 by the National Association of Pipeline Safety Representatives (NAPSR), an association of State pipeline safety inspectors. As one of its annual recommendations submitted to the RSPA Administrator, NAPSR urged DOT "to initiate a rulemaking to establish regulations which would require natural gas operator personnel qualification." NAPSR made this recommendation after finding that "[i]t would be in the best interest of public safety, and as a general standard for the natural gas industry, that all natural gas system operations be under the direction of a person who is qualified by test, experience, and training in natural gas work."

The National Transportation Safety Board (NTSB) also sees the need for regulatory action with regard to qualification of personnel. Like NAPSR, it recommends a rulemaking approach rather than Federal licensing or certification of operators. In a recently issued report (NTSB–Par–87–1) on two Texas Eastern Gas Pipeline accidents in Kentucky, NTSB asked RSPA to:

> Amend 49 CFR Parts 192 and 195 to require that operators of pipelines develop and conduct selection, training, and testing programs to annually qualify employees for correctly carrying out each assigned responsibility which is necessary for complying with 49 CFR Part 192 and 195 as appropriate. (Rec. No. P–87–2)

Comments on this advance notice of proposed rulemaking will assist RSPA in properly responding to this recommendation as required by Section 307 of the Independent Safety Board Act of 1974 (49 U.S.C. 1906).

RSPA also prepared an investigative report on the operations and mantenance procedures of Texas Eastern (*Texas Eastern Gas Pipeline Company Operations and Maintenance Procedures Evaluation*, November 1986). Although personnel qualifications were not questioned, the report concluded that the company's O&M plan was not sufficiently detailed—particularly in regard to corrosion control—to provide proper guidance to field personnel. One of the report's recommendations was that—

> OPS should revise § 192.605, "Essentials of operating and maintenance plan," to provide more guidance" (simlar to § 192.615 regarding emergency plans, and § 195.402 regarding liquid pipeline procedural manuals).

III Analysis of the Problem

The primary evidence that pipeline operators do not always use qualified personnel comes from the testimony State inspectors gave to the IG and at the annual RSPA/State regional meetingss. The focus of the State inspectors' concern has been small gas distribution systems. These systems are often characterized as master meter systems serving mobile home parks or housing complexes, and as private or municipal systems serving fewer than 10,000 customers. Also, for purposes of the Regulatory Flexibility Act (5 U.S.C. 601–612), RSPA has determined that small liquid operators are independently owned and operated with less than $1 milliion annual cash flow.

Based on its own field experience, OPS agrees with the State inspectors' view. It is apparent that, in general, operator personnel of small gas systems do not have the same level of technical competency and understanding of the Federal safety standards as do operator personnel of the larger distribution systems and interstate transmission facilities. RSPA had previously published this opinion with regard to master meter operators in a report titled *Exercise of Jurisdiction Over Master*

Meter Operators (March 1984), prepared as required by Section 111 of the Pipeline Safety Act of 1979 (49 U.S.C. 1682 note). At page 12 of this report, RSPA noted that "[m]ost master meter gas operators have limited knowledge of the hazards, proper materials, maintenance or operation of a safe gas system."

At the same time, the master meter report found it probable that even though the risk is ill defined, master meter failures, fatalities, and injuries are slight in comparison to total significant gas distribution failures and resulting fatalties and injuries. For this reason and because of the NGPSA policy that States enforce all intrastate pipeline safety regulations, the report affirmed DOT's policy of continuing to apply the minimum Federal safety standards, while encouraging the States to take a greater role in master meter safety. State actions recommended included establishing State-wide training courses or inducing larger utilities to assume the master meter functions. With this policy the enormity of the potential master meter problem (considering the estimated 81,000 master meter operators compared to the 1,491 other distribution operators) would not unduly drain the limited RSPA pipeline safety resources, and yet uniform standards of safety would be maintained.

In view of the House Committee's recommendation that "all pipeline operators be certified or licensed, RSPA sought the advice of its two advisory committees, representing government agencies, pipeline operators, and the public: the Technical Pipeline Safety Standards Committee and the Hazardous Liquid Pipeline Safety Standards Committee. At a joint meeting in Washington, DC, on December 4, 1986, the two committees concluded that there is not a lack of qualified personnel in most large companies; but that there could be a lack in small distribution, municipal, and master meter companies. It was agreed there is no need to certify all operators, but there could be safety improvement with respect to small distribution, municipal, and master meter operators. As to who shoud be certified, the consensus was that this could vary depending on the layering of administration in each company, but that emphasis should be on persons in charge of O&M activities. When asked about the Federal role in any certification program, the majority felt it should be one of guidance, coordination and oversight, but not direct involvement.

In addition to this more or less empirical evidence that small operators lack qualified personnel, many accidents have been reported that are attributable, in part, to poor performance by operator personnel. These accidents are not limited to small gas distribution systems. For example, a recent interstate pipeline accident was, in part, due to improper matching of pipe ends by operator personnel in preparation for welding. Other examples involve cases where operator personnel repair or tap plastic pipe without guarding against static electricity; unwittingly enter gas-rich areas; or suffocate inside pipe believed to be purged, manholes not vented or inside unvented storage tanks. Also, operator personnel have caused accidents by improper use of pigging apparatus and failed to properly respond to indications of line ruptures. It would be difficult to determine the full extent of accidents attributable to poor personnel performance since numerous cases reported as non-personnel related, such as equipment failure or corrosion, actually may have been set in motion by poor maintenance practices or installation techniques.

Of course, there is no certainty that these reported instances could have been avoided or mitigated by additional regulations governing the training or qualifications of operator personnel or by a government licensing program for the operator personnel involved. No doubt regulations or licensing would result in some improvement in safety, but errors by otherwise qualified personnel probably account for some of the poor performance that led to or exacerbated the reported accidents. Also, the effectiveness of any remedial effort regarding qualifications is unclear. Thus, it is questionable whether the accidents that can be tied to poorly qualified operator personnel are sufficiently numerous and widespread or the proposed remedies sufficiently effective to warrant the cost of the extensive Federal effort that would be required to certify the personnel qualifications of all operators.

Another difficulty (besides accidents) that poorly trained or qualified operator personnel present is their inability to apply or understand the performance type safety standards in Parts 192 and 195. Better qualifications could lead to a higher level of compliance, which should mean fewer opportunities for accidents. Still it is not clear whether safety improvements could be achieved which would be worth the expenditures required for their accomplishment.

To understand the complexities and potential costs of certifying just the key personnel of all pipeline operators or imposing on these operators additional regulations for personnel qualifications, it is useful to know the numbers of jurisdictional operators in each major category. These are tabulated below based on current OPS data:

Category	Number of Operators	
	Less than 10,000 services	Total
Gas distribution:		
Master meter	81,000	81,000
Municipal	873	902
Private utility	392	589
Gas transmission	N/A	[1]425
Hazardous liquid	N/A	170

[1] Includes distribution companies that own transmission lines.

The number of operator personnel that would be affected by new regulations or certification would depend in large part on the size of the systems involved.

IV. Status of Federal and State Actions Regarding Operator Qualifications

The Part 192 and Part 195 safety standards already contain many specific requirements regarding personnel qualification and training. They are listed below:

- § 192.11, Petroleum gas systems.—Incorporation by reference of NFPA 58 and 59 requires that all persons employed in handling LP-gas be properly trained in handling and operating procedures.
- § 192.227.& § 195.222, Qualifications of welders.—Incorporation by reference of API 1104 and the ASME Boiler Code provides welding tests that persons must pass before welding on pipelines.
- § 192.241(b), Inspection and test of welds.—Certain welds that are visually inspected by a qualified welding inspector need not be nondestructively tested.
- § 192.243(b)(2) & § 195.234(b)(2), Nondestructive testing. Nondestructive testing of welds must be performed by persons who are trained and qualified in the test procedures and equipment.
- § 192.285, Plastic pipe; qualifying persons to make joints.—Persons joining plastic pipe must be qualified by training and tests of specimen joints.
- § 192.287, Plastic pipe; inspection of joints.—Persons inspecting plastic pipe joints must be qualified by training or experience in evaluating joint acceptability.
- § 192.453, General [corrosion control].—Corrosion control procedures must be carried out by, or under the

direction of, a person qualified by experience and training in corrosion control methods.

• § 192.615(b)(2), Emergency plans.—Each operator must train personnel to know the emergency procedures and verify that the training is effective.

• § 195.204, Inspection—general.—Pipeline construction must be inspected by persons trained and qualified in the phase being inspected.

• § 195.403, Training.—Each operator must instruct operating and maintenance personnel to carry out the O&M procedures, know the characteristics of hazards, recognize emergencies, control accidental releases, use fire fighting equipment, and safely repair facilities. Annual reviews of personnel performance and training effectiveness are required.

In addition to its regulatory efforts, RSPA continues to play a direct role in operator personnel training. Through its varied courses in system safety offered by the Transportation Safety Institute in State-sponsored 2-day seminars, RSPA is increasing the knowledge of operator personnel throughout the country about proper application of the Federal safety standards. Further, RSPA has published and disseminated several documents on pipeline safety, including over 24,000 copies of the widely used "Guidance Manual for Operators of Small Gas Systems."

State agencies have also been active on their own to train operator personnel, working with industry trade associations in many cases. At least 5 States have attempted to develop certification programs, although none has established a working program. One problem has been the reluctance of State trade associations to participate in proposed certification programs because of the potential legal liabilities involved in conducting the actual training and licensing.

V. Summary and Request for Comments

OPS believes that the competency of operator personnel is a problem that is generally limited to small municipal and privately owned gas distribution utilities and to master meter systems. Even with the large number of master meter operators, the competency problem does not appear to pose a substantial threat to public safety because the number of persons exposed to small systems is low by comparison with the larger systems, and the degree of hazard attributable to incompetent operation of small systems is not clearly established.

Improved operator personnel qualifications through additional regulations or licensing could enhance safety to some extent. Precisely how much is difficult to predict, though, because of the uncertain effectiveness of any training or qualification program in reducing accidents, and the difficulty of relating the lack of qualifications in particular areas to accident causes.

OPS has not projected the costs of imposing new regulations or starting a certification program. Any data that would quantify such costs is solicited. No doubt the costs would be extensive, particularly if every pipeline operator had to comply. Costs could be reduced significantly, however, if the scope of any new rules or program were reduced to maximize the benefits, and if the problem areas could be more specifically defined and related to accident causes.

In the face of the numerous requests for action, OPS is requesting public comment on the need for action, and if more should be done than at present, what the form of that action should be. The following questions are intended to focus public discussion on factors relevant to these issues:

1. Does the competency level of operator personnel pose a significant enough threat to public safety to warrant further governmental action? (Provide explanation of response).

2. If you answer "yes" to question 1:

(a) Should the governmental action be applied industry-wide or just to operators of master meter and other small gas distribution systems?

(b) Who should be responsible for taking the necessary action: DOT or State agencies?

(c) What should be the appropriate governmental action:

(i) Further regulation of personnel training and qualifications like that now in Parts 192 and 195;

(ii) A licensing/certification program applicable to operator personnel; or

(iii) Stepped-up direct training and preparation of guidance material for operator personnel?

3. If additional regulations for personnel training or qualifications like those now in Parts 192 and 195 are developed:

(a) In what areas (design, construction, operation, or maintenance) should they apply?

(b) Which areas should require testing of personnel qualifications?

(c) What would be the cost of compliance per operator affected?

(d) How would safety be improved in terms of accidents prevented or mitigated?

4. If a State or Federal government licensing/certification program is started:

(a) For what job functions should certified personnel be required, and should all personnel be certified or just managers or supervisors of those functions?

(b) What standards (experience, training, testing, physical capabilities) should be applied to determine competency in that job function?

(c) Should personnel certificates be granted directly by the government (State or Federal); by a government approved private entity; or by operators subject to government oversight and enforcement?

(d) What would be the cost of compliance per operator affected?

(e) Who should provide the training needed to qualify personnel for certificates?

(f) What benefits might be expected from a certification program in terms of accidents prevented or mitigated, and would these benefits be more or less than could be achieved through additional qualification or training regulations?

(g) Under what circumstances should action be taken to revoke a certificate, and what procedures should apply to such revocation?

5. How should O&M regulations for gas operators differ from the Part 195 O&M regulations?

Issued in Washington, DC on March 18, 1987.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 87-6162 Filed 3-20-87; 8:45 am]

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Federal Highway Administration

49 CFR 391

[OMCS Docket No. 128; Notice. No. 87-04]

Blood Alcohol Concentration Standard for Commercial Vehicle Operators

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments from interested parties concerning the establishment of a commercial driver blood alcohol concentration (BAC) standard. This action is in response to Congress' enactment of the Commercial Motor Vehicle Safety Act of 1986 (the Act). Section 12008 of the Act calls for the National Academy of Sciences (NAS) to conduct a study of the appropriateness of reducing the BAC level (from 0.10 to 0.04 percent or some other level less than 0.10 percent) at or above which a person operating a commercial motor