

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Parts 190, 193, and 195**

[Docket No. 114; Notice No. 1]

RIN 2137-AB77

**Amendment of an Operator's Plans or Procedures****AGENCY:** Office of Pipeline Safety (OPS), RSPA, DOT.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** OPS is proposing to make changes in the procedures and policy by which it addresses deficiencies in procedures and plans. As proposed, OPS would move to part 190 the substance of current § 195.402(b), relating to the process for amending an operator's procedures for conducting normal operations and maintenance activities, and handling abnormal operations and emergencies, making it applicable to gas and LNG pipeline facilities as well as to hazardous liquid pipeline facilities. The amendment process would also be applicable to other plans and procedures required by part 193 and § 199.7. In addition, OPS is proposing to make operators subject to all enforcement sanctions under the Natural Gas Pipeline Safety Act of 1968, as amended (NGPSA) (49 App. U.S.C. 1671 *et seq.*), and the Hazardous Liquid Pipeline Safety Act of 1979, as amended (HLPESA) (49 App. U.S.C. 2001 *et seq.*), for failure to maintain all plans and procedures in accordance with applicable requirements.

**DATES:** Comments must be received on or before December 6, 1989. Late filed comments will be considered to the extent practicable.

**ADDRESSES:** Address comments to the Dockets Unit, Office of Pipeline Safety, Room 8417, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Comments should identify the docket and notice number and be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments should include self-addressed stamped postcards. This notice and all docketed materials are available for inspection and copying in Room 8421, between 8:30 a.m. and 5:00 p.m. each working day, or telephone the Dockets Unit on (202) 366-5046.

**FOR FURTHER INFORMATION CONTACT:** Cesar De Leon on (202) 366-1640.

**SUPPLEMENTARY INFORMATION:** The proposals in this notice will clarify the

exercise of OPS's delegated authority under the NGPSA and HLPESA to assure that operations and maintenance (O&M) and related plans and procedures are adequate to achieve safe operations. In accordance with section 13 of the NGPSA (49 App. U.S.C. 1680) and section 210 of the HLPESA (49 App. U.S.C. 2009), OPS administers a statutory process for amending plans it finds to be inadequate. At the present time, however, this process has been implemented in regulation only in parts 193 and 195. Therefore, OPS proposes to move the current procedures found in §§ 195.402(b) and 193.2017(b) (with appropriate modification) to a new § 190.9, which would be applicable to all plans and procedures in parts 192, 193, 195, and 199. To accommodate this change, paragraph (b) of §§ 193.2017 and 195.402 would be deleted, and the remainder of the latter section redesignated.

OPS is also proposing to strengthen its enforcement of the inspection and maintenance requirements prescribed in the NGPSA and the HLPESA, which it has traditionally viewed as a compliance and enforcement focus separate from other subjects regulated under those statutes. These other subjects—for example, testing, cathodic protection, and leak surveying—have been addressed with the statutory enforcement tools of civil penalties and compliance orders or, where appropriate, with hazardous facility orders.

There is no reason to restrict enforcement of written plans and procedures to the amendment process. The current approach to correcting deficient O&M plans has had the effect of limiting the enforcement tools available to the Department in addressing the quality and effectiveness of O&M plans, which are the foundation of sound operations. Consequently, OPS should have the widest latitude to assure that operators develop O&M and related plans that comply with applicable safety requirements, and that operators and their employees, as their agents, in turn comply with the plans. Therefore, if adopted, operators would be subject to the assessment of civil penalties (and criminal penalties if a violation is committed knowingly and willfully) and any other appropriate sanction available under either the NGPSA or the HLPESA. In the case of civil penalties, an operator's due process protections would be substantially the same as those afforded under the O&M amendment process, including prior notice and an opportunity for an informal hearing before final agency action is taken.

**Miscellaneous**

Sections in part 190 concerning or referencing hearings would be revised for consistency.

**Administrative Procedures**

Because these proposals relate to agency procedures and policy, notice and public procedure are not required. However, OPS is providing 30 days' notice for comment because it believes a brief comment period is in the public interest, and because it seeks comment on whether any plans or procedures required by parts 192, 193, 195, and 199 should not be subject to all enforcement sanctions in part 190.

**Paperwork Reduction Act**

The rule proposed by this notice contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Impact Assessment**

The rule proposed by this notice is considered to be nonmajor under Executive Order 12291 and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Because it proposes no substantive revisions that could be expected to require significant changes in operator procedures or compliance burdens, and because the economic impact would be slight, a full regulatory evaluation is not required.

Accordingly, I certify under section 605 of the Regulatory Flexibility Act that the rule proposed by this notice, if adopted as final, will not have a significant economic impact on a substantial number of small entities.

OPS has analyzed this rulemaking action in accordance with the principles and criteria of E.O. 12612 (52 FR 41685) and has determined that it does not have sufficient Federalism implications to warrant preparing a Federalism Assessment.

**List of Subjects****49 CFR Part 190**

Enforcement, Operations and maintenance procedures, Pipeline safety, Reporting and recordkeeping requirements.

**49 CFR Part 193**

Pipeline safety, Reporting and recordkeeping requirements.

**49 CFR Part 195**

Operations and maintenance procedures, Pipeline safety, Procedural

manual, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, Code of Federal Regulations, parts 190, 193, and 195 would be amended as follows:

#### **PART 190—[AMENDED]**

1. The authority citation for part 190 is revised to read as follows:

**Authority:** 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1681, 1804, 2002, 2006, 2007, 2008, 2009, and 2010; 49 CFR 1.53.

2. Section 190.9 would be added to read as follows:

#### **§ 190.9 Amendment of plans or procedures.**

(a) A Region Chief, OPS, begins a proceeding to determine whether an operator's plans or procedures required under parts 192, 193, 195 and 199 of this chapter are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice shall provide an opportunity for a hearing under § 190.211 and shall specify the alleged inadequacies and the proposed action for revision of the plans or procedures. The notice shall allow the operator 30 days after receipt of the notice to submit written comments or request a hearing. After considering all material presented in writing or at the hearing, the Director, OPS, shall determine whether the plans or procedures are inadequate as alleged and, if they are inadequate, order the required amendment, or withdraw the notice. In determining the adequacy of an operator's plans and procedures, the Director, OPS, shall consider:

(1) Relevant available pipeline safety data,

(2) Whether the plans or procedures are appropriate in accordance with the requirements of this chapter for the particular type of pipeline transportation or facility,

(3) The reasonableness of the plans or procedures, and

(4) The extent to which the plans or procedures contribute to public safety.

(b) The amendment of an operator's plans or procedures prescribed in paragraph (a) of this section is in addition to, and may be used in conjunction with, the appropriate enforcement actions prescribed in subpart B of this part.

3. Section 190.211(a) would be revised to read as follows:

#### **§ 190.211 Hearing.**

(a) A request for a hearing provided for in this part must be accompanied by a statement of the issues that the respondent intends to raise at the

hearing. The issues may relate to the allegations in the notice, the proposed corrective action, or the proposed civil penalty amount. A respondent's failure to specify an issue may result in waiver of his right to raise that issue at the hearing. The respondent's request must also indicate whether or not he will be represented by counsel at the hearing.

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4. Section 190.233(a) would be revised to read as follows:

#### **§ 190.233 Hazardous facility orders.**

(a) Except as provided by paragraph (b) of this section, if the Director, OPS, finds, after reasonable notice and opportunity for hearing in accordance with paragraph (c) of this section and § 190.211(a), a particular pipeline facility to be hazardous to life or property, he shall issue an order pursuant to this section requiring the owner or operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action, as appropriate.

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#### **PART 193—[AMENDED]**

5. The authority citation for part 193 continues to read as follows:

**Authority:** 49 App. U.S.C. 1671 *et seq.*; 49 CFR 1.53.

#### **§ 193.2017 [Amended]**

6. In § 293.2017, paragraph (b) would be removed, and the designation (a) would be removed from the remaining paragraph.

#### **PART 195—[AMENDED]**

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

**Authority:** 49 App. U.S.C. 2002; and 49 CFR 1.53.

#### **§ 195.402 [Amended]**

8. In § 195.402, paragraph (b) would be removed and paragraphs (c), (d), (e), and (f) would be redesignated as paragraphs (b), (c), (d), and (e), respectively, and all internal references in the newly designated paragraphs would be changed accordingly.

#### **§§ 195.404 and 195.408 [Amended]**

9. In §§ 195.404(a)(1)(vi) and 195.408(b)(1), the reference to "§ 195.402(c)(9)" would be changed to read "195.402(b)(9)".

Issued in Washington, DC, on October 31, 1989.

Richard L. Beam,

Director, Office of Pipeline Safety.

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#### **49 CFR Parts 192 and 195**

[Docket No. PS-113; Notice 1]

RIN 2137-AB 44

#### **Operation and Maintenance Procedures for Pipelines**

**AGENCY:** Office of Pipeline Safety (OPS), RSPA, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to clarify and delineate the items that must be addressed in procedures for operations and maintenance (O&M) of gas pipeline facilities. The current rule is not sufficiently detailed to assure that operators take timely and appropriate actions under normal conditions or in responding to abnormal situations. More detailed O&M procedures should reduce the likelihood of failures and provide a better basis for personnel training. In addition, operators of gas and hazardous liquid pipelines would be required to establish procedures for personnel safety in trenches where there may be a hazardous accumulation of vapor or gas.

**DATE:** Comments must be received by February 5, 1990. Late filed comments will be considered so far as is practicable.

**ADDRESSES:** Send comments in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, 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:** Bernard Liebler, (202) 366-2392, regarding changes to safety standards; or the Dockets Unit, (202) 366-5046, for copies of this notice or other material in the docket.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Between November 1984 and February 1986, a major operator of gas