

Dated: February 20, 1998.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS-117; Notice 4]

RIN 2137-AC87

Low-Stress Hazardous Liquid Pipelines Serving Plants and Terminals

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to exclude from RSPA's safety regulations for hazardous liquid pipelines low-stress pipelines regulated for safety by the U.S. Coast Guard and certain low-stress pipelines less than one mile long serving plants and terminals. Difficulties involving compliance with RSPA's regulations do not appear warranted by risk and may cause operating errors that impair safety. It is RSPA's policy toward effective government to eliminate duplicative and unnecessarily burdensome regulations.

DATES: RSPA invites interested persons to submit comments by close of business April 28, 1998. Late comments will be considered as far as practicable.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW, Washington, D.C. 20590. Comments should identify the docket and the notice number stated in the heading of this notice. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. All comments and docketed material will be available for inspection and copying in Room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow at (202) 366-4559 or furrowl@rspa.dot.gov. For copies of this notice or other material in the docket, contact the Dockets Unit at (202) 366-5046.

SUPPLEMENTARY INFORMATION:

I. Background

When RSPA's safety regulations for hazardous liquid¹ pipelines (49 CFR part 195) were first published, the regulations did not apply to low-stress pipelines² (34 FR 15473; Oct. 4, 1969). In recent years, however, during a time of increased environmental awareness, critical accidents involving low-stress pipelines led Congress to restrict DOT's discretion to exempt these lines from regulation. So, in an amendment to the pipeline safety laws, Congress directed the Secretary of Transportation not to exempt from regulation a hazardous liquid pipeline facility only because the facility operates at low internal stress (49 U.S.C. § 60102(k)).

In response to this change in the law, RSPA extended the Part 195 regulations to cover certain low-stress pipelines (Docket No. PS-117; 59 FR 35465; July 12, 1994). Except for onshore rural gathering lines and gravity-powered lines, the following categories of low-stress pipelines were brought under the regulations: pipelines that transport highly volatile liquids, pipelines located onshore and outside rural areas, pipelines located offshore, and pipelines located in waterways that are currently used for commercial navigation (§ 195.1(b)(3)). Because the rulemaking record showed that many low-stress pipelines probably were not operated and maintained consistent with Part 195 requirements, operators were allowed to delay compliance of their existing lines until July 12, 1996 (§ 195.1(c)).

II. Interfacility Transfer Lines

A. Description

The largest proportion of low-stress pipelines brought under Part 195 consisted of interfacility transfer lines (about two-thirds of the pipelines and one-third of the overall mileage). The remainder included trunk lines and gathering lines located outside rural areas.

Interfacility transfer lines move hazardous liquids locally between facilities such as truck, rail, and vessel transportation terminals, manufacturing plants (including petrochemical plants), and oil refineries, or between these facilities and associated storage or long-distance pipeline transportation.³ The

¹ "Hazardous liquid" means petroleum, petroleum products, or anhydrous ammonia.

² "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 (SMYS) of the line pipe.

³ The interfacility transfer lines did not include piping that connect high-stress pipelines with surge tanks located at plants and terminals. This piping

lines usually are short, averaging about a mile in length. Typically they are operated in association with other transfer piping on the grounds of the industrial plants and terminals they serve.

B. Related Federal Regulations

Segments of interfacility transfer lines located on the grounds of industrial plants and transportation terminals are subject to the Process Safety Management regulations of the Occupational Safety and Health Administration (OSHA) (29 CFR 1910.119). These regulations, which involve hazard analysis and control, operating and maintenance procedures, and personnel training, are intended to reduce the risk of fires and explosions caused by the escape of hazardous chemicals from facility processes.

Although on-grounds segments of interfacility transfer lines generally are excepted from Part 195 (§ 195.1(b) (6) and (7)),⁴ the on-grounds segment and regulated off-grounds segment of a line function together as a unit. Thus, OSHA's Process Safety Management regulations, though applicable only to on-grounds segments, affect the operation of off-grounds segments. And, similarly, compliance with part 195 for off-grounds segments affects operation of the unregulated on-grounds segments.

In addition, most transfer lines between vessels and marine transportation-related facilities are subject to safety regulations of the U.S. Coast Guard (33 CFR parts 154 and 156). The Coast Guard applies these regulations to transfers of hazardous liquid from the dock loading arm or manifold up to the first valve after the line enters the Spill Prevention Control and Countermeasure (SPCC) containment or secondary containment if the facilities are not protected by SPCC plans.

C. Compliance Difficulties

Information we received in response to Notice 1 of Docket PS-117 (55 FR 45822; Oct. 31, 1990) showed that bringing interfacility transfer lines into full compliance with part 195 would be difficult for many operators. The primary difficulty is that their lines are not installed and operated on the basis of part 195 standards. For example,

was already subject to the part 195 regulations as part of the pipeline systems for which the tanks relieve surges.

⁴ Segments of interfacility transfer lines on plant or terminal grounds are subject to Part 195 if the segment connects a regulated pipeline (including off-grounds segments of interfacility transfer lines) to a surge tank or other device necessary to control the operating pressure of the regulated pipeline.

considering the short length and low operating stress of the lines, additional pipe wall thickness is often used instead of cathodic protection to resist expected corrosion. But, regardless of this feature, under part 195, cathodic protection systems would have to be developed and installed as required. Other part 195 requirements that may not bring commensurate benefits for short, low-stress transfer lines involve modifying operations and maintenance manuals, installing pressure control equipment, and establishing programs to carry out drug and alcohol rules under 49 CFR part 199. Also, operating personnel would have to be trained to carry out part 195 requirements.

After publication of the Final Rule in Docket PS-117, we learned about another significant compliance difficulty. Transfer line operators and their representatives said that coping with the separate federal regulatory regimes of RSPA, OSHA, and the Coast Guard over transfer lines was a strain on resources. As explained above, OSHA's Process Safety Management regulations and RSPA's part 195 standards have an overlapping effect on operation of interfacility transfer lines. This overlap results in analogous administrative costs for records, procedures, and manuals. Worse yet it creates opportunities for mistakes when operating personnel have to meet different requirements with similar objectives.

For transfers between vessels and marine transportation-related facilities, the Coast Guard safety regulations compound the RSPA-OSHA overlap problem. Moreover, applying part 195 to these marine terminal transfer lines duplicates agency efforts within DOT. It also leaves the industry uncertain which DOT safety standards apply to particular facilities. So the upshot of these separate regulatory regimes of RSPA, OSHA, and the Coast Guard is not only the added costs of meeting separate requirements directed at similar safety objectives, but also possible confusion of operating personnel.

The low-stress pipeline regulations also present RSPA and its cooperating State agencies with related compliance difficulties. Carrying out adequate compliance inspections on interfacility transfer lines would require a significant increase in resources. We estimate that about 11,000 miles of low-stress pipelines are now under part 195, with over a third of the mileage composed of short interfacility transfer lines. Just the job of finding and educating the many operators of these short lines would likely be a major, protracted effort.

D. Stay of Enforcement

We weighed these industry and government compliance difficulties against the need for risk reduction on low-stress interfacility transfer lines. Our conclusion was that the potential benefits of complying with part 195 do not justify the compliance difficulties if the line is short and does not cross an offshore area or a commercially navigable waterway, or if the line is regulated by the Coast Guard. There were several reasons for this decision. First, RSPA's pipeline safety data do not show that short interfacility transfer lines have been a source of significant safety problems. Another reason was that the low operating hoop stress of interfacility transfer lines is itself a safeguard against several accident causes. And, from the consequence perspective, a short length means the potential spill volume would be limited should an accident occur. Also, public exposure is typically limited in the industrial areas where most low-stress interfacility transfer lines are located. For marine transfer lines, the risk is reduced even further by the Coast Guard regulations and inspection force. At the same time, except for Coast Guard regulated lines, the potential of transfer lines crossing offshore or a commercially navigable waterway to cause environmental harm tipped the scale toward continued compliance with part 195.

In view of the above considerations, we became concerned that the continued application of part 195 to Coast Guard regulated lines and other short interfacility transfer lines not crossing an offshore area or a commercially navigable waterway was not in the public interest. Consequently, we announced a stay of enforcement of part 195 against these lines (61 FR 24245; May 14, 1996). The stay applies to low-stress pipelines that are regulated by the Coast Guard or that extend less than 1 mile outside plant or terminal grounds without crossing an offshore area or any waterway currently used for commercial navigation. The stay will remain in effect until modified or until the part 195 regulations are finally revised as a result of the present action.

Since announcement of the stay, we have not received any request to lift it. More important, we have explained this new enforcement policy at two public meetings of the Technical Hazardous Liquid Pipeline Safety Advisory Committee, a statutory panel that reviews RSPA's pipeline safety program. We also explained our plan to revise the part 195 regulations consistent with the stay. Neither the Committee members

nor the public attendees raised any significant objection to the enforcement policy or planned rule change. Further, State agencies who cooperate with RSPA in enforcing safety standards over interfacility transfer lines have not objected to the stay.

E. Direct Final Rule

Following publication of the stay of enforcement, we issued a direct final rule to expand the low-stress pipeline exclusion under § 195.1(b)(3) to include interfacility transfer lines that are covered by the stay (62 FR 31364; June 9, 1997).

The direct final rule changed § 195.1(b)(3) to read as follows:

(b) This part does not apply to—

* * * * *

(3) Transportation through the following low-stress pipelines:

- (i) An onshore pipeline or pipeline segment that—
 - (A) Does not transport HVL;
 - (B) Is located in a rural area; and
 - (C) Is located outside a waterway currently used for commercial navigation;
- (ii) A pipeline subject to safety regulations of the U.S. Coast Guard; and
- (iii) A pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than 1 mile long (measured outside facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation;

* * * * *

The procedures governing issuance of direct final rules are in 49 CFR 190.339. These procedures provide for public notice and opportunity for comment subsequent to publication of a direct final rule. They also provide that if an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely notice in the **Federal Register** to confirm that fact and withdraw the direct final rule in whole or in part. Under the procedures, RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

Four persons submitted comments on the direct final rule: American Petroleum Institute (API), California Department of Fish and Game (CDF&G), California Independent Petroleum Association (CIPA), and Western States Petroleum Association (WSPA). API made an editorial comment, while CIPA and WSPA argued that the direct final rule should be expanded to also exclude from part 195 short low-stress pipelines serving production shipping facilities in urban areas.

However, CDF&G opposed the direct final rule. This State agency contended the Coast Guard's regulations are not an

adequate substitute for RSPA's because the Coast Guard regulations do not specify a hold time for pressure tests, do not apply to transfer lines that only serve small vessels (less than 250 barrels of cargo capacity), and do not require cathodic protection to guard against corrosion. CDF&G also said the exclusion of short plant and terminal transfer lines should apply only if a discharge would not impact marine waters of the United States.

Because of the adverse comment from CDF&G, we withdrew the direct final rule (62 FR 52511; October 8, 1997). As a result, § 195.1(b)(3) remains as it was before issuance of the direct final rule. In the withdrawal notice, we said we would follow up with the withdrawal with a notice of proposed rulemaking based on the direct final rule and the comments we received on it. The present action is that notice of proposed rulemaking.

F. Proposed Rule

In commenting on the direct final rule, API suggested we clarify that a low-stress pipeline would be excluded from part 195 if it comes under any one of the three categories of excluded low-stress pipelines ((i), lines previously excluded; (ii), lines subject to Coast Guard regulations; and (iii), certain lines serving plants and terminals). API further suggested that replacing the word "and" between categories (ii) and (iii) with the word "or" would accomplish this objective. In addition to adopting this comment, to avoid any further misunderstanding, we are proposing to modify the introductory phrase of § 195.1(b)(3) to read "transportation through any of the following low-stress pipelines."

CIPA and WSPA argued that our rationale for excluding certain short transfer lines serving refineries, manufacturing plants, and truck, rail, or vessel terminals applies equally to similar transfer lines serving production shipping facilities in urban areas. These two commenters also said that until the direct final rule was published, many of their members thought the stay of enforcement covered these transfer lines (otherwise known as gathering lines) located in urban areas because of the reference to low-stress pipelines outside "plant" grounds in the operative words of the stay.

Despite the parallels these commenters drew, we are not proposing to exclude from part 195 short low-stress pipelines serving production shipping facilities in urban areas. First of all, we never intended the stay to

apply to urban gathering lines.⁵ Our notice of the stay discussed part 195 compliance problems associated with short transfer lines that interconnect refineries; manufacturing plants; petrochemical plants; truck, rail, or vessel transportation terminals; and long-distance pipelines. It is within this context that the term "plant" was used. Also, when the notice of the stay referred to gathering lines, the context distinguished gathering lines from other kinds of transfer lines. Moreover, the primary reason for the stay, as well as the direct final rule, was the overlapping effect of part 195 and OSHA's Process Safety Management regulations (29 CFR 1910.119) on plant and terminal transfer lines. However, these OSHA regulations do not apply to oil production operations. So, although there may be similarities between urban gathering lines and transfer lines covered by the stay, the absence of an overlap with the OSHA regulations significantly weakens CIPA's and WSPA's argument for excluding short urban gathering lines from part 195. Not only do the OSHA regulations not compound the difficulties these lines may have in meeting part 195, neither can the OSHA regulations be counted on to lower the risk of the lines. And this latter point is even more important because urban gathering lines are not as likely to exist in uninhabited industrial areas as are the transfer lines covered by the stay.

We share CDF&G's concern that any exclusion of plant and terminal transfer lines not increase the risk to marine waters. But we do not agree that the Coast Guard's regulations do not afford as much protection as RSPA's. Although the Coast Guard's regulations do not specify a hold time for pressure tests and do not require cathodic protection, they do require that existing transfer lines be pressure tested annually to at least 150 percent of the pipeline's maximum allowable working pressure. This requirement is more rigorous than RSPA's pressure testing standard (subpart E of part 195) for low-stress pipelines. Not only does the RSPA standard exempt most existing low-stress pipelines (49 CFR 195.302(b)(3)), low-stress transfer lines that are subject to testing under the standard only have to be tested once to no more than 125 percent of maximum operating pressure. We also believe the higher safety margin of the Coast Guard test (50% above maximum allowable working pressure) and the higher frequency of testing, with on-scene Coast Guard inspection, makes

⁵ Rural gathering lines are excluded from part 195 by § 195.1(b)(4).

the lack of a cathodic protection requirement less important. As to the concern over transfers to small capacity vessels, any low-stress marine transfer lines that are not subject to Coast Guard regulations would continue to be covered by part 195, unless they are otherwise excluded under § 195.1(b)(3).

In light of CDF&G's comment about the impact on marine waters of plant and terminal transfer lines, we also considered broadening in this notice the provision in the direct final rule that kept under part 195 short lines crossing offshore or commercially navigable waters. As mentioned above, our reason for not excluding these short pipelines from regulation was their potential for environmental harm. This potential is increased by the presence of the lines in important water resources and by the vulnerability of the lines to outside force damage. In weighing the need for risk reduction against the difficulties of compliance with part 195, we decided this increased potential for environmental harm was reason enough to keep the lines under part 195. CDF&G's suggestion to exclude short lines only if a discharge would not impact marine waters would possibly keep even more lines under part 195; for example, lines that are proximate to, but do not cross, marine waters. But unlike lines crossing offshore or commercially navigable waterways, we do not believe that as a whole these additional short lines pose a level of risk that outweighs their compliance difficulties. Therefore, the proposed rule would exclude from part 195 the same low-stress pipelines that were covered by the direct final rule.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Policies and Procedures

The Office of Management and Budget (OMB) does not consider this action to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). Therefore, OMB has not reviewed this final rule document. DOT does not consider this action significant under its regulatory policies and procedures (44 FR 11034; February 26, 1979).

RSPA prepared a study of the costs and benefits of the Final Rule that extended part 195 to cover certain low-stress pipelines (Final Regulatory Evaluation, Docket No. PS-117). That study, which encompassed short or Coast Guard regulated interfacility transfer lines, showed that the Final Rule would result in net benefits to society, with a benefit to cost ratio of 1.5.

The Final Regulatory Evaluation determined costs and benefits of the Final Rule on a mileage basis. But while costs were evenly distributed, most of the expected benefits were projected from accident data that did not involve short or Coast Guard regulated interfacility transfer lines. Since the present action affects only these lines, it is reasonable to believe the action will reduce more costs than benefits. Thus, the present action should enhance the net benefits of the Final Rule. Because of this likely economic effect, a further regulatory evaluation of the Final Rule in Docket No. PS-117 or of the present action is not warranted.

B. Regulatory Flexibility Act

Low stress interfacility transfer lines covered by the present action are associated primarily with the operation of refineries, petrochemical and other industrial plants, and materials transportation terminals. In general, these facilities are not operated by small entities. Nonetheless, even if small entities operate low-stress interfacility transfer lines, their costs will be lower because this action reduces compliance burdens. Therefore, 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 this rulemaking action will not have a significant economic impact on a substantial number of small entities.

C. 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.

D. Paperwork Reduction Act

This action reduces the pipeline mileage and number of operators subject to part 195. Consequently, it reduces the information collection burden of part 195 that is subject to review by OMB under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirements of part 195 through May 31, 1999 (OMB No. 2137-0047).

E. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects in 49 CFR Part 195

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

In consideration of the foregoing, RSPA proposes to amend 49 CFR part 195 as follows:

PART 195—[AMENDED]

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

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

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

§ 195.1 Applicability.

* * * * *

(b) This part does not apply to—

* * * * *

(3) Transportation through any of the following low-stress pipelines:

(i) An onshore pipeline or pipeline segment that—

- (A) Does not transport HVL;
- (B) Is located in a rural area; and
- (C) Is located outside a waterway currently used for commercial navigation;

- (ii) A pipeline subject to safety regulations of the U.S. Coast Guard; or
- (iii) A pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than 1 mile long (measured outside facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation;

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Issued in Washington, D.C. on February 23, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.
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