

by removing Arcadia, Channel 252C2 and adding Fort Meade, Channel 252C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 194

[Docket No. PS-130; Amdt. 194-1]

RIN 2137-AD12

Pipeline Safety: Change in Response Plan Review Cycle

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

ACTION: Confirmation of effective date and correction of direct final rule.

SUMMARY: This document confirms the effective date of the direct final rule that changes the reporting cycle for facility response plan submissions to five years for operators who are required to submit facility response plans to RSPA.

Pipeline operators were previously required to submit facility response plans every three years. This document also corrects a citation contained in the Background section of the direct final rule, and addresses the comments that were submitted to RSPA by clarifying certain language.

DATES: The effective date of the direct final rule published on December 24, 1997, (62 FR 67292) is confirmed to be February 23, 1998. The effective date of the correction to the Direct Final Rule is February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Jim Taylor, (202) 366-8860, or by e-mail at jim.taylor@rspa.dot.gov, regarding the subject matter of this Notice; or the RSPA Dockets Unit, (202) 366-5046, for copies of the direct final rule or other information in the docket.

SUPPLEMENTARY INFORMATION:

Need for Correction

In the direct final rule published in the **Federal Register** on December 24, 1997, (62 FR 67292), on page 67292, in the third column, the first sentence of third paragraph of the Background section incorrectly refers to 49 CFR 194.121(b). The sentence should refer to 49 CFR 194.121(a).

Need for Clarification

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 unless an adverse comment or notice of intent to file an adverse comment is received within a specified comment period, the Administrator will issue a confirmation document advising the public that the direct final rule will either become effective on the date stated in the direct final rule or at least 30 days after the publication date of the confirmation. If an adverse comment or notice of intent to file an adverse comment had been received, RSPA would have issued a timely notice in the **Federal Register** to confirm that fact and withdrawn the direct final rule in whole or in part. According to the procedures, an adverse comment is one that explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to the rule is not an adverse comment, unless the commenter states why the rule would be ineffective without the additional change.

As discussed below, RSPA received two comments on the direct final rule. RSPA does not consider any of the comments to be adverse comments under the direct final rule procedures.

Consequently, RSPA is publishing this document to confirm the effective date announced in the direct final rule.

The California Department of Fish and Game's Office of Spill Prevention and Response and the American Petroleum Institute provided comments. Although both were supportive of the direct final rule in concept, both expressed concerns about application of the new rules.

California suggested that RSPA should require operators to review their plans annually for any corrections, deletions, or additions, submitting minor changes to RSPA annually, and submitting substantive changes as soon as they occur. RSPA shares California's concerns and believes that it is prudent for operators to review their own plans periodically to ensure that the documents are current. Although RSPA is not adopting California's suggested requirement, RSPA will consider it for a future rulemaking later this year.

The American Petroleum Institute (API) commented that the five-year cycle should commence on the date RSPA approves a response plan,

whenever that takes place. RSPA agrees, and applies this rule to "significant and substantial harm" facilities. However, RSPA believes the plan review cycle for facilities designated as "substantial harm" commences on the date of the most recent plan submission based on the fact that RSPA does not issue approvals for "substantial harm" facilities. RSPA will clarify when it issues the final rule for 49 CFR part 194 later this year. API also identified a typographical error in a regulatory citation. RSPA has corrected the error. API commented that they believed that there is no current requirement for substantial harm facilities to submit plans. RSPA disagrees, and has left the reference intact.

In response to comments received, RSPA provides the following specific clarifications:

1. As proposed, § 194.121(a) indicates that response plans should be submitted five years from the date of submission of these plans to RSPA. To clarify, plans for facilities designated as "substantial harm" facilities should be submitted based on the most recent date of submission of the plans to RSPA, rather than on the date of approval, because "substantial harm" facilities have not been issued an approval date by RSPA. However, plans for facilities designated as "significant and substantial harm" should be submitted based on the most recent approval date issued by RSPA. RSPA will clarify when it issues the final rule for 49 CFR part 194, subpart B is issued later this year.

2. On page 67292, in the third column, the last sentence of fourth paragraph under the Background section states: "Although the current three-year cycle for all plans is ending, when this rule becomes effective there will be no requirement to resubmit existing plans until two years from now." This sentence could be interpreted to require an operator whose plan was approved in 1997 to resubmit the plan again in two years, and every five years thereafter. This is not the intent of RSPA. RSPA's intent is that if an operator's plan was approved in 1997, the next submission would not be required until 2002, five years from the plan's approval date.

3. The Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1251-1387) specifies that response plans must be submitted for onshore facilities that "because of (their) location, could reasonably be expected to cause substantial harm to the environment," as well as for facilities that "could reasonably be expected to cause significant and substantial harm to the environment * * *" (33 U.S.C. 1321(j)(5)(B)(iii) and 1321(j)(5)(D)).

RSPA believes that all operators of onshore oil pipelines are required to submit facility response plans under 49 CFR part 194, but has decided to review and approve only those plans designated by the operators as posing a threat of "significant and substantial harm to the environment."

Issued in Washington, DC on February 25, 1998.

Kelley S. Coyner,

Acting Administrator.

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