

part of the authorized program, are not incorporated by reference, and are not federally enforceable:

(i) Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", published in 2002 by the Michie Company, Law Publishers: sections 39-4403(6)&(14); 39-4427; 39-4428 and 39-4429.

(ii) Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Siting Act", published in 2002 by the Michie Company, Law Publishers: section 39-5813(3).

(iii) Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published July 2002: sections 58.01.05.355; and 58.01.05.500.

(4) *Memorandum of Agreement*. The Memorandum of Agreement between EPA Region 10 and the State of Idaho (IDEQ), signed by the EPA Regional Administrator on August 1, 2001, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(5) *Statement of Legal Authority*. The "Attorney General's Statement for Final Authorization," signed by the Attorney General of Idaho on July 5, 1988 and revisions, supplements and addenda to that Statement, dated July 3, 1989, February 13, 1992, December 29, 1994, September 16, 1996, October 3, 1997, April 6, 2001, and September 11, 2002, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Program Description*. The Program Description, and any other materials submitted as part of the original application or as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to part 272, State Requirements, is amended by revising the listing for "Idaho" to read as follows:

#### Appendix A to Part 272—State Requirements

\* \* \* \* \*

#### Idaho

(a) The statutory provisions include: Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", 2002:

sections 39-4402; 39-4403 (except 39-4403(6)&(14)); 39-4408(1)-(3); 39-4409(1) (except fourth and fifth sentences); 39-4409(2) (first sentence); 39-4409(4) (except first sentence); 39-4409(5); 39-4409(6); 39-4409(7); 39-4409(8); 39-4411(2); 39-4411(4); 39-4411(5); 39-4423 (except 39-4423(3)(a)&(b)); and 39-4424.

Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Facility Siting Act", published in 2002 by the Michie Company, Law Publishers: sections 39-5802; 39-5803; 39-5808; 39-5811; 39-5813(1); and 39-5818(2).

Copies of the Idaho statutes that are incorporated by reference are available from Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, VA 22906-7587.

(b) The regulatory provisions include:

Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published on July 2002: sections 58.01.05.001; 58.01.05.002; 58.01.05.003; 58.01.05.004; 58.01.05.005; 58.01.05.006; 58.01.05.007; 58.01.05.008; 58.01.05.009; 58.01.05.010; 58.01.05.011; 58.01.05.012; 58.01.05.013; 58.01.05.014; 58.01.05.015; 58.01.05.016; 58.01.05.356.01; and 58.01.05.998, except where any of those sections reference the use of enforceable documents in the context of the Post Closure rule. Idaho did not seek, nor receive, authorization for language in those sections which states as follows: "\* \* \* or in an enforceable document (as defined in 270.1(c)(7))." Therefore, these Federal amendments included in Idaho's adoption by reference at IDAPA 58.01.05.000, *et seq.*, are not part of the State's authorized program. Nor does Idaho's authorized program include the Federal regulations at 40 CFR 270.1(c)(7), 40 CFR 265.121, 40 CFR 265.110(c) or 40 CFR 265.119(c)(4) because Idaho did not seek authorization for those sections.

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Parts 190, 191, 192, 193, 194, 195, 198, and 199

RIN 2137-AD77

#### Agency Reorganization: Nomenclature Change and Technical Amendments

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** In accordance with the Norman Y. Mineta Research and Special Programs Improvement Act, which

reorganized the Department's pipeline and hazardous materials safety programs into the new Pipeline and Hazardous Materials Safety Administration (PHMSA), this document revises all references to the former Research and Special Programs Administration (RSPA) in 49 CFR parts 190 through 199 to reflect the creation of PHMSA. This document also updates the Office of Pipeline Safety's internet and mailing addresses, docket procedures, titles, section numbers, penalty considerations and cap adjustments, terminology, and other changes conforming part 190 with the Pipeline Safety Improvement Act of 2002. The amendments made by this rule reflect the changed organizational posture of the agency and update the part 190 enforcement procedures to reflect current public law. This rule does not impose any new operating requirements on pipeline owners and operators.

**DATES:** This final rule is effective March 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** Lawrence White, Attorney-Advisor, Pipeline and Hazardous Materials Safety Administration, Office of the Chief Counsel, 400 7th Street, SW., Washington, DC 20590. Tel: (202) 366-4400. Fax: (202) 366-7041. E-mail: [lawrence.white@dot.gov](mailto:lawrence.white@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background and Summary

In accordance with the Norman Y. Mineta Research and Special Programs Improvement Act (Pub. L. 108-426, 118 Stat. 2423; Nov. 30, 2004) (the "Mineta Act"), which reorganized the Department's pipeline and hazardous materials safety programs into the new PHMSA, this document revises all references to the former RSPA in 49 CFR parts 190-199 to reflect the creation of PHMSA. This document also makes conforming changes reflecting the enactment of the Pipeline Safety Improvement Act of 2002 (Pub. L. 107-355, 116 Stat. 2985; Dec. 17, 2002) (the "PSI Act") including changes to the Office of Pipeline Safety's (OPS') Internet and mailing addresses, docket procedures, titles, section numbers, penalty considerations and cap adjustments, terminology, and other editorial changes to enhance the clarity and consistency of the part 190 enforcement procedures used by the agency. The amendments made by this rule reflect the changed organizational posture of the agency and update the part 190 enforcement procedures to reflect current public law. This rule does not impose any new operating

requirements on pipeline owners and operators.

The following is a summary of the nomenclature changes, updates to the enforcement procedures in part 190, and other technical amendments made to the affected sections of 49 CFR under this final rule. It does not include all editorial and typographical corrections and other minor amendments that were made to enhance the clarity and consistency of the enforcement procedures used by the agency.

- In 49 CFR parts 190, 191, 192, 193, 194, 195, 198, and 199, the term “Research and Special Programs Administration” is changed to “Pipeline and Hazardous Materials Safety Administration” everywhere it appears, and the abbreviation “RSPA” is changed to “PHMSA” everywhere it appears (*see* Mineta Act, Sec. 2; 49 U.S.C. 108).

- In § 190.203, the procedure used by OPS to request that pipeline operators afford their assistance with pipeline incident investigations is specified in paragraph (e) (*see* PSI Act Sec. 10(a); 49 U.S.C. 60118(e)).

- In §§ 190.213 and 190.215, the time period within which the Administrator issues final orders and takes action on petitions for reconsideration is updated to reflect the Administrator’s policy of issuing such orders and decisions expeditiously and providing notice if substantial delays are expected.

- In § 190.223, paragraph (a) is amended to reflect the statutory increase in the maximum civil penalty amount of \$25,000 per violation per day, with a \$500,000 cap for any related series of violations, to \$100,000 per violation per day with a \$1,000,000 cap (*see* PSI Act Sec. 8(b); 49 U.S.C. 60122(a)(1)).

- In § 190.223, the civil penalty of up to \$1,000 for violation of the whistleblower protection provisions is specified in paragraph (d) (*see* PSI Act Sec. 6(b); 49 U.S.C. 60122(a)).

- In § 190.225, the penalty assessment considerations are amended by specifying environmental impact as a factor that must be considered, and any economic benefit from the violation as a factor that may be considered (*see* PSI Act Sec. 8(b); 49 U.S.C. 60122(b)).

- In § 190.229, paragraph (c) is amended by specifying intentional damage to intrastate pipeline facilities as an act subject to criminal penalties (*see* PSI Act Sec. 8(c); 49 U.S.C. 60123(b)).

- In § 190.229, knowingly and willfully engaging in excavation activity that results in property damage, serious injury, or death, without first using an available One-Call notification system is specified as an act subject to criminal

penalties in paragraph (e) (*see* PSI Act Sec. 3(c); 49 U.S.C. 60123(d)).

- In § 190.233, the term “hazardous facility order” is changed to “corrective action order” everywhere it appears and the title of the section is amended (*see* PSI Act Sec. 8(a); 49 U.S.C. 60112(d)).

- In § 190.233, wherever the phrase “\* \* \* hazardous to life or property” appears, the phrase “or the environment” is added after the word property (*see* PSI Act Sec. 8(a); 49 U.S.C. 60112(a)).

- In § 190.235, civil penalties are specified as an available U.S. District Court remedy, and the title of the section is amended. Operators should note that OPS believes that the caps that apply to civil penalties that are assessed in administrative proceedings would not apply to civil penalties assessed in U.S. District Court actions (*see* PSI Act Sec. 8(b); 49 U.S.C. 60120(a)).

#### Public Notice and Effective Date

This final rule reflects the changed organizational posture of the Department due to the establishment of PHMSA, changes nomenclature, and updates the part 190 enforcement procedures to reflect current public law. As such, this final rule is ministerial in nature and relates only to agency organization, procedure and practice. This final rule does not impose substantive requirements on the public and the agency does not expect to receive substantive comments on the rule. Accordingly, notice and comment on this rule is unnecessary under 5 U.S.C. 553(b).

With respect to the effective date, because this rule relates only to agency organization, procedure and practice, does not impose substantive requirements on the public, and its expeditious issuance facilitates the Department’s ability to meet the statutory implementation requirements of the Mineta Act, we find that there is good cause under 5 U.S.C. 553(d) to make this rule effective on March 8, 2005.

#### Rulemaking Analyses and Notices

##### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under Section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. This rule is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). Because this rule only changes nomenclature to reflect the organizational posture of the agency and

updates the part 190 enforcement procedures to reflect current public law, it has no economic impact on regulated entities and preparation of a regulatory impact analysis was not warranted.

##### B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This rule does not introduce any regulation that: (1) Has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on state and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Further, this rule does not have sufficient impacts on federalism to warrant the preparation of a federalism assessment.

##### C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this rule does not significantly or uniquely affect the communities of the Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

##### D. Executive Order 13211

This final rule is not a significant energy action under Executive Order 13211. It is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rule has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

##### E. Regulatory Flexibility Act

Because this final rule only changes nomenclature to reflect the organizational posture of the agency, amends agency internal practice and procedure, and will have no direct or indirect economic impacts for government units, businesses, or other organizations, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

##### F. Paperwork Reduction Act

This final rule contains no new information collection requirements or

additional paperwork burdens. Therefore, submitting an analysis of the burdens to OMB pursuant to the Paperwork Reduction Act was unnecessary.

#### G. Unfunded Mandates Reform Act

This final 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, as adjusted for inflation, 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.

#### H. Environmental Assessment

Because this final rule involves agency practices and procedures and does not impose any new requirements on pipeline operators, there are no significant environmental impacts associated with this rule.

#### List of Subjects

##### 49 CFR Part 190

Administrative practice and procedure, Penalties.

##### 49 CFR Part 191

Reporting and recordkeeping requirements.

##### 49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

##### 49 CFR Part 193

Pipeline safety, Reporting and recordkeeping requirements.

##### 49 CFR Part 194

Oil Pollution, Pipeline safety, Reporting and recordkeeping requirements.

##### 49 CFR Part 195

Pipeline safety, Reporting and recordkeeping requirements.

##### 49 CFR Part 198

Grant programs-transportation, Pipeline safety, Reporting and recordkeeping requirements.

##### 49 CFR Part 199

Drug testing, Pipeline safety, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Pipeline and Hazardous Materials Safety Administration amends 49 CFR parts 190, 191, 192, 193, 194, 195, 198, and 199 as follows:

### PART 190—PIPELINE SAFETY PROGRAMS AND RULEMAKING PROCEDURES

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

**Authority:** 33 U.S.C. 1321; 49 U.S.C. 5101–5127, 60101 *et seq.*; 49 CFR 1.53.

■ 2. In 49 CFR part 190, remove the words “Research and Special Programs Administration” and add, in their place, the words “Pipeline and Hazardous Materials Safety Administration” in the following places:

- a. Section 190.1(a);
- b. Section 190.3 in three places;
- c. Section 190.9(b)(1)(ii) and (b)(2);
- d. Section 190.211(c); e. Section 190.231 in two places;
- f. Section 190.233(c)(3);
- g. Section 190.301;
- h. Section 190.303;
- i. Section 190.305(a);
- j. Section 190.307; and
- k. Section 190.309.

■ 3. In 49 CFR part 190, remove the abbreviation “RSPA” and add, in its place, the abbreviation “PHMSA” in the following places:

- a. Section 190.3;
- b. Section 190.7(a) in three places, (h), (i) in two places, and (j) in two places;
- c. Section 190.11(a)(1) in two places, (a)(2), (b), and (b)(2);
- d. Section 190.203(a), (b)(6), and (d) in two places; and
- e. Section 190.235.

■ 4. Amend § 190.203 by revising the section heading, redesignating paragraph (e) as paragraph (f), and adding a new paragraph (e) to read as follows:

#### § 190.203 Inspections and investigations.

\* \* \* \* \*

(e) If a representative of the DOT investigates an incident involving a pipeline facility, OPS may request that the operator make available to the representative all records and information that pertain to the incident in any way, including integrity management plans and test results, and that the operator afford all reasonable assistance in the investigation.

(f) When the information obtained from an inspection or from other appropriate sources indicates that further OPS action is warranted, the OPS may issue a warning letter under § 190.205 or initiate one or more of the enforcement proceedings prescribed in §§ 190.207 through 190.235.

■ 5. Amend § 190.213 by revising paragraph (e) to read as follows:

#### § 190.213 Final order.

\* \* \* \* \*

(e) It is the policy of the Associate Administrator, OPS to issue a final

order under this section expeditiously. In cases where a substantial delay is expected, notice of that fact and the date by which it is expected that action will be taken is provided to the respondent upon request and whenever practicable.

■ 6. Amend § 190.215 by revising paragraph (f) to read as follows:

#### § 190.215 Petitions for reconsideration.

\* \* \* \* \*

(f) It is the policy of the Associate Administrator, OPS to issue notice of the action taken on a petition for reconsideration expeditiously. In cases where a substantial delay is expected, notice of that fact and the date by which it is expected that action will be taken is provided to the respondent upon request and whenever practicable.

■ 7. Amend § 190.223 by redesignating paragraph (d) as paragraph (e), adding a new paragraph (d), and revising paragraph (a) to read as follows:

#### § 190.223 Maximum penalties.

(a) Any person who is determined to have violated a provision of 49 U.S.C. 60101 *et seq.*, or any regulation or order issued thereunder, is subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation continues except that the maximum civil penalty may not exceed \$1,000,000 for any related series of violations.

\* \* \* \* \*

(d) Any person who is determined to have violated any standard or order under 49 U.S.C. 60129 shall be subject to a civil penalty not to exceed \$1,000, which shall be in addition to any other penalties to which such person may be subject under paragraph (a) of this section.

(e) No person shall be subject to a civil penalty under this section for the violation of any requirement of this subchapter and an order issued under § 190.217, § 190.219, or § 190.233 if both violations are based on the same act.

■ 8. Revise § 190.225 to read as follows:

#### § 190.225 Assessment considerations.

In determining the amount of a civil penalty under this part,

(a) The Associate Administrator, OPS shall consider:

- (1) The nature, circumstances and gravity of the violation, including adverse impact on the environment;
- (2) The degree of the respondent's culpability;
- (3) The respondent's history of prior offenses;
- (4) The respondent's ability to pay;
- (5) Any good faith by the respondent in attempting to achieve compliance;
- (6) The effect on the respondent's ability to continue in business; and

(b) The Associate Administrator, OPS may consider:

(1) The economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages; and

(2) Such other matters as justice may require.

■ 9. Amend § 190.227 by revising paragraph (a) to read as follows:

**§ 190.227 Payment of penalty.**

(a) Except for payments exceeding \$10,000, payment of a civil penalty proposed or assessed under this subpart may be made by certified check or money order (containing the CPF Number for the case), payable to "U.S. Department of Transportation," to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25770, Oklahoma City, OK 73125, or by wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Payments exceeding \$10,000 must be made by wire transfer.

\* \* \* \* \*

■ 10. Amend § 190.229 by redesignating paragraph (e) as paragraph (f), adding a new paragraph (e), and revising paragraph (c) to read as follows:

**§ 190.229 Criminal penalties generally.**

\* \* \* \* \*

(c) Any person who willfully and knowingly injures or destroys, or attempts to injure or destroy, any interstate transmission facility, any interstate pipeline facility, or any intrastate pipeline facility used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce (as those terms are defined in 49 U.S.C. 60101 *et seq.*) shall, upon conviction, be subject for each offense to a fine of not more than \$25,000, imprisonment for a term not to exceed 15 years, or both.

\* \* \* \* \*

(e) Any person who willfully and knowingly engages in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area; or without considering location information or markings established by a pipeline facility operator; and

(1) Subsequently damages a pipeline facility resulting in death, serious bodily harm, or property damage exceeding \$50,000;

(2) Subsequently damages a pipeline facility and knows or has reason to know of the damage but fails to promptly report the damage to the

operator and to the appropriate authorities; or

(3) Subsequently damages a hazardous liquid pipeline facility that results in the release of more than 50 barrels of product; shall, upon conviction, be subject for each offense to a fine of not more than \$5,000, imprisonment for a term not to exceed 5 years, or both.

(f) No person shall be subject to criminal penalties under paragraph (a) of this section for violation of any regulation and the violation of any order issued under § 190.217, § 190.219 or § 190.229 if both violations are based on the same act.

■ 11. Revise § 190.233 to read as follows:

**§ 190.233 Corrective action orders.**

(a) Except as provided by paragraph (b) of this section, if the Associate Administrator, OPS finds, after reasonable notice and opportunity for hearing in accord with paragraph (c) of this section and § 190.211(a), a particular pipeline facility to be hazardous to life, property, or the environment, the Associate Administrator, OPS 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 appropriate action.

(b) The Associate Administrator, OPS may waive the requirement for notice and opportunity for hearing under paragraph (a) of this section before issuing an order pursuant to this section when the Associate Administrator, OPS determines that the failure to do so would result in the likelihood of serious harm to life, property, or the environment. However, the Associate Administrator, OPS shall provide an opportunity for a hearing as soon as is practicable after the issuance of a compliance order. The provisions of paragraph (c)(2) of this section apply to an owner or operator's decision to exercise its opportunity for a hearing. The purpose of such a post-order hearing is for the Associate Administrator, OPS to determine whether a compliance order should remain in effect or be rescinded or suspended in accord with paragraph (g) of this section.

(c) Notice and hearing:

(1) Written notice that OPS intends to issue an order under this section shall be served upon the owner or operator of an alleged hazardous facility in accordance with § 190.5. The notice shall allege the existence of a hazardous facility and state the facts and

circumstances supporting the issuance of a corrective action order. The notice shall also provide the owner or operator with the opportunity for a hearing and shall identify a time and location where a hearing may be held.

(2) An owner or operator that elects to exercise its opportunity for a hearing under this section must notify the Associate Administrator, OPS of that election in writing within 10 days of service of the notice provided under paragraph (c)(1) of this section, or under paragraph (b) of this section when applicable. The absence of such written notification waives an owner or operator's opportunity for a hearing and allows the Associate Administrator, OPS to issue a corrective action order in accordance with paragraphs (d) through (h) of this section.

(3) A hearing under this section shall be presided over by an attorney from the Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, acting as Presiding Official, and conducted without strict adherence to formal rules of evidence. The Presiding Official presents the allegations contained in the notice issued under this section. The owner or operator of the alleged hazardous facility may submit any relevant information or materials, call witnesses, and present arguments on the issue of whether or not a corrective action order should be issued.

(4) Within 48 hours after conclusion of a hearing under this section, the Presiding Official shall submit a recommendation to the Associate Administrator, OPS as to whether or not a corrective action order is required. Upon receipt of the recommendation, the Associate Administrator, OPS shall proceed in accordance with paragraphs (d) through (h) of this section. If the Associate Administrator, OPS finds the facility is or would be hazardous to life, property, or the environment, the Associate Administrator, OPS shall issue a corrective action order in accordance with this section. If the Associate Administrator, OPS does not find the facility is or would be hazardous to life, property, or the environment, the Associate Administrator shall withdraw the allegation of the existence of a hazardous facility contained in the notice, and promptly notify the owner or operator in writing by service as prescribed in § 190.5.

(d) The Associate Administrator, OPS may find a pipeline facility to be hazardous under paragraph (a) of this section:

(1) If under the facts and circumstances the Associate

Administrator, OPS determines the particular facility is hazardous to life, property, or the environment; or

(2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which the Associate Administrator, OPS determines is hazardous to life, property, or the environment, unless the operator involved demonstrates to the satisfaction of the Associate Administrator, OPS that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous.

(e) In making a determination under paragraph (d) of this section, the Associate Administrator, OPS shall consider, if relevant:

(1) The characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction or assembly;

(2) The nature of the materials transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such materials are transported, and the pressure required for such transportation;

(3) The characteristics of the geographical areas in which the pipeline facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas;

(4) Any recommendation of the National Transportation Safety Board issued in connection with any investigation conducted by the Board; and

(5) Such other factors as the Associate Administrator, OPS may consider appropriate.

(f) A corrective action order shall contain the following information:

(1) A finding that the pipeline facility is hazardous to life, property, or the environment.

(2) The relevant facts which form the basis of that finding.

(3) The legal basis for the order.

(4) The nature and description of any particular corrective action required of the respondent.

(5) The date by which the required corrective action must be taken or completed and, where appropriate, the duration of the order.

(6) If the opportunity for a hearing was waived pursuant to paragraph (b) of this section, a statement that an opportunity for a hearing will be

available at a particular time and location after issuance of the order.

(g) The Associate Administrator, OPS shall rescind or suspend a corrective action order whenever the Associate Administrator, OPS determines that the facility is no longer hazardous to life, property, or the environment. When appropriate, however, such a rescission or suspension may be accompanied by a notice of probable violation issued under § 190.207.

(h) At any time after a corrective action order issued under this section has become effective, the Associate Administrator, OPS may request the Attorney General to bring an action for appropriate relief in accordance with § 190.235.

(i) Upon petition by the Attorney General, the District Courts of the United States shall have jurisdiction to enforce orders issued under this section by appropriate means.

■ 12. Revise § 190.235 to read as follows:

**§ 190.235 Civil actions generally.**

Whenever it appears to the Associate Administrator, OPS that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of 49 U.S.C. 60101 *et seq.*, or any regulations issued thereunder, the Administrator, PHMSA, or the person to whom the authority has been delegated, may request the Attorney General to bring an action in the appropriate U.S. District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, civil penalties, and punitive damages as provided under 49 U.S.C. 60120 and 49 U.S.C. 5123.

■ 13. Amend § 190.305 by revising paragraph (b) to read as follows:

**§ 190.305 Regulatory dockets.**

\* \* \* \* \*

(b) Any person may examine public docket material, once a docket is established, at the offices of the Dockets Management System, U.S. Department of Transportation, 400 7th Street, SW., Room PL-401, Washington, DC 20590, and may obtain a copy of it upon payment of a fee, at any time between the hours of 9 a.m. and 5 p.m., Monday through Friday, excluding Federal holidays, with the exception of material which the Administrator, PHMSA determines should be withheld from public disclosure under applicable provisions of any statute administered by the Administrator and section 552(b) of title 5, United States Code. Public comments may also be submitted and reviewed by accessing the Dockets

Management System's Web site at <http://dms.dot.gov>. Inquiries and comment submissions must identify the Docket Number. The Dockets Management System is located on the Plaza Level of the Nassif Building at the above address.

**PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: ANNUAL REPORTS, INCIDENT REPORTS, AND SAFETY-RELATED CONDITION REPORTS**

■ 1. The authority citation for part 191 continues to read as follows:

**Authority:** 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124; and 49 CFR 1.53.

■ 2. In 49 CFR part 191, remove the words "Research and Special Programs Administration" and add, in their place, the words "Pipeline and Hazardous Materials Safety Administration" in the following places:

- a. Section 191.3;
- b. Section 191.7; and
- c. Section 191.27(b).

■ 3. In 49 CFR part 191, remove the abbreviation "RSPA" and add, in its place, the abbreviation "PHMSA" in the following places:

- a. Section 191.1(b)(2) in two places; and
- b. Section 191.3.

**PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS**

■ 1. The authority citation for part 192 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

■ 2. In 49 CFR part 192, remove the words "Research and Special Programs Administration" and add, in their place, the words "Pipeline and Hazardous Materials Safety Administration" in the following places:

- a. Section 192.3;
- b. Section 192.7(b);
- c. Section 192.727(g)(1) and (2);
- d. Section 192.949; and
- e. Section 192.951.

■ 3. In 49 CFR part 192, remove the abbreviation "RSPA" and add, in its place, the abbreviation "PHMSA" in the following places:

- a. Section 192.1(b)(2) in two places; and
- b. Section 192.10.

■ 4. In § 192.727(g)(1) and (2), remove the e-mail address "[roger.little@rspa.dot.gov](mailto:roger.little@rspa.dot.gov)" and add, in its place, the e-mail address "[roger.little@dot.gov](mailto:roger.little@dot.gov)".

### PART 193—LIQUEFIED NATURAL GAS FACILITIES: FEDERAL SAFETY STANDARDS

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

**Authority:** 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

- 2. In 49 CFR part 193, remove the words “Research and Special Programs Administration” and add, in their place, the words “Pipeline and Hazardous Materials Safety Administration” in the following places:

- a. Section 193.2007; and
- b. Section 193.2013.

### PART 194—RESPONSE PLANS FOR ONSHORE OIL PIPELINES

- 1. The authority citation for part 194 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5) and (j)(6); sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.53.

- 2. In 49 CFR part 194, remove the words “Research and Special Programs Administration” and add, in their place, the words “Pipeline and Hazardous Materials Safety Administration” in § 194.119(a).

- 3. In 49 CFR part 194, remove the abbreviation “RSPA” and add, in its place, the abbreviation “PHMSA” in the following places:

- a. Section 194.101(a) in two places;
- b. Section 194.119(b) in two places, (c) in five places, (d) in two places, (e) in two places, and (f) in four places; and
- c. Section 194.121(b), (c) in two places, and (d) in four places.

### PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

- 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 49 CFR part 195, remove the words “Research and Special Programs Administration” and add, in their place, the words “Pipeline and Hazardous Materials Safety Administration” in the following places:

- a. Section 195.2;
- b. Section 195.3(b);
- c. Section 195.57(b);
- d. Section 195.58;
- e. Section 195.59(a) and (b); and
- f. Section 195.452(m).

- 3. In 49 CFR part 195, remove the abbreviation “RSPA” and add, in its place, the abbreviation “PHMSA” in the following places:

- a. Section 195.1; and

- b. Section 195.9.

- 4. In § 195.59(a) and (b), remove the e-mail address “roger.little@rspa.dot.gov” and add, in its place, the e-mail address “roger.little@dot.gov”.

### PART 198—REGULATIONS FOR GRANTS TO AID STATE PIPELINE SAFETY PROGRAMS

- 1. The authority citation for part 198 continues to read as follows:

**Authority:** 49 U.S.C. 60105, 60106, 60114; and 49 CFR 1.53.

- 2. In 49 CFR part 198, remove the words “Research and Special Programs Administration” and add, in their place, the words “Pipeline and Hazardous Materials Safety Administration” in § 198.3.

- 3. In 49 CFR part 198, remove the abbreviation “RSPA” and add, in its place, the abbreviation “PHMSA” in § 198.13(e).

### PART 199—DRUG AND ALCOHOL TESTING

- 1. The authority citation for part 199 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

- 2. In 49 CFR part 199, remove the words “Research and Special Programs Administration” and add, in their place, the words “Pipeline and Hazardous Materials Safety Administration” in the following places:

- a. Section 199.3;
- b. Section 199.7;
- c. Section 199.119(b); and
- d. Section 199.229(c).

- 3. In 49 CFR part 199, remove the abbreviation “RSPA” and add, in its place, the abbreviation “PHMSA” in the following places:

- a. Section 199.119(a) in two places;
- b. Section 199.225(b)(4); and
- c. Section 199.229(a) in two places.

Issued in Washington, DC on February 25, 2005.

**Elaine E. Joost,**

*Acting Deputy Administrator.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AI26

### Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon; Re-evaluation of Non-Economic Exclusions From August 2003 Final Designation

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule; confirmation.

**SUMMARY:** We, the Fish and Wildlife Service (Service), confirm the non-economic exclusions made to our previous final rule (August 6, 2003, 68 FR 46683, effective September 5, 2003), which designated critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for 4 vernal pool crustaceans and 11 vernal pool plants. A total of approximately 1,184,513 ac (479,356 ha) of land falls within the boundaries of designated critical habitat. This estimate reflects exclusion of: Lands within the boundaries of Habitat Conservation Plans, National Wildlife Refuge lands and National fish hatchery lands (33,097 ac (13,394 ha)), State lands within ecological reserves and wildlife management areas (20,933 ac (8,471 ha)), Department of Defense lands within Beale and Travis Air Force Bases as well as Fort Hunter Liggett and Camp Roberts Army installations (64,259 ac (26,005 ha)), Tribal lands managed by the Mechoopda Tribe (644 ac (261 ha)), and the Santa Rosa Plateau Ecological Reserve (10,200 ac (4,128 ha)) from the final designation. The area estimate does not reflect the exclusion of lands within the California counties of Butte, Madera, Merced, Sacramento, and Solano, which are excluded from the final designation pursuant to section 4(b)(2) of the Act and pending further analysis as directed by the October 29, 2004, order by the court.

This critical habitat designation requires us to consult under section 7 of the Act with regard to actions authorized, funded, or carried out by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation.