12. On page 79001, in the first column, in the table of contents, ''88.2 Organizational integrity of recipients'' is corrected to ''89.2 Organizational integrity of recipients.''

13. On page 79001, in the first column, in the table of contents, ''88.3 Certifications'' is corrected to ''89.3 Certifications.''

14. On page 79001, in the first column, the heading ''88.1 Definitions'' is corrected to ''89.1 Definitions.''

15. On page 79001, in the second column, the heading ''88.2 Organizational integrity of recipients'' is corrected to ''89.2 Organizational integrity of recipients.''

16. On page 79001, in the third column, in newly redesignated § 89.2, in paragraph (b), ''required by § 88.3'' is corrected to ''required by § 89.3.''

17. On page 79001, in the third column, the heading ''88.3 Certifications'' is corrected to ''89.3 Certifications.''

Dated: January 12, 2009.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. E9–843 Filed 1–15–09; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

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

RIN 2137–AE29

[Docket No. PHMSA–2007–0033]

Pipeline Safety: Administrative Procedures, Address Updates, and Technical Amendments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule adopts, with minor modifications, an interim final rule issued by PHMSA on March 28, 2008, conforming PHMSA's administrative procedures with the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 by establishing the procedures PHMSA will follow for issuing safety orders and handling requests for special permits, including emergency special permits. The rule also notifies operators about electronic docket information availability; updates addresses for filing reports, telephone numbers, and routing symbols; and clarifies the time period for processing requests for written interpretations of the regulations. This final rule makes minor amendments and technical corrections to the regulatory text in response to written public comments received after issuance of the interim final rule.

DATES: *Effective Date:* This final rule is effective February 17, 2009.

FOR FURTHER INFORMATION CONTACT: Larry White, PHMSA, Office of Chief Counsel, 202–366–4400, or by e-mail at *lawrence.white@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2008, PHMSA issued an interim final rule (73 FR 16562) conforming PHMSA's administrative procedures with the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act) (Pub. L. 109–468) by establishing the procedures PHMSA will follow for issuing safety orders and handling requests for special permits, including emergency special permits. The interim final rule also notified operators about electronic docket information availability; updated addresses, telephone numbers, and routing symbols; and clarified the time period for processing requests for written interpretations of the regulations. Because we considered these amendments to be procedural and ministerial in nature, PHMSA made them effective immediately, while inviting public comment on any and all terms. Having since received and considered written comments in response to our March 28, 2008, notice, PHMSA now is issuing this final rule, incorporating minor amendments and technical corrections to the regulatory text.

Safety Orders. Pursuant to section 13 of the PIPES Act, the interim final rule established the process by which PHMSA will initiate safety order proceedings to address identified pipeline integrity risks that may not rise to the level of a hazardous condition requiring immediate corrective action under 49 U.S.C. 60112, but should be addressed over time to prevent failures. The rule requires PHMSA to provide operators with notice and an opportunity for a hearing before issuing a safety order and expressly authorizes informal consultation in advance of an administrative hearing. In the absence of consent, a safety order must be based on a finding by the Associate Administrator for Pipeline Safety that a pipeline facility has a condition that poses a risk to public safety, property, or the environment. In making the required finding, the Associate Administrator considers all relevant information, including the nine considerations expressly enumerated in 49 U.S.C. 60117(l)(2). PHMSA expects the majority of safety order proceedings to be resolved by consent agreement between the operator and PHMSA. The safety order process established in the interim final rule is largely unchanged in this final rule.

Special Permits. To clarify the procedures governing special permits, and to establish new procedures for exercise of the agency's emergency authority, the interim final rule added a new section, entitled ''Special permits,'' to our administrative procedures in 49 CFR Part 190. The rule outlines the procedures under which pipeline operators (and prospective operators) may request special permits. It specifies the information that must be provided in each application and, in accordance with 49 U.S.C. 60118(c)(1)(B), provides for public notice and hearing on applications for (non-emergency) special permits. Section 10 of the PIPES Act provided PHMSA with the authority to issue an emergency waiver of a pipeline safety regulation without prior notice and hearing if necessary to address an emergency involving pipeline transportation, and the rule outlines the procedures for operators to request such emergency special permits. The special permit process established in the interim final rule is largely unchanged in this final rule.

Other Amendments. The interim final rule also amended part 190 by adding a new paragraph notifying operators that all materials they submit in response to administrative enforcement actions may be placed on publicly accessible websites. The rule sets forth the procedure for seeking confidential treatment, along with other information concerning the agency's new enforcement transparency website. The rule also reflects the recent relocation of DOT Headquarters and the transition from the Department's electronic docket management system to the government-wide electronic docket system (found at regulations.gov), enabling electronic service of enforcement documents. This final rule also amends 49 CFR Parts 191–199 to correct the address for filing annual, accident, and safety-related condition reports for hazardous liquid pipelines (which was inadvertently omitted from the interim final rule) and corrects addresses, telephone numbers, and routing symbols in the regulations for filing various other forms and reports.

Comments on the Interim Final Rule

The interim final rule conformed agency practice and procedures to current public law and reflected the relocation of PHMSA headquarters; it did not impose any new substantive requirements on operators or the public. Accordingly, we determined that it was unnecessary to precede it with a notice of proposed rulemaking. Nevertheless, we encouraged interested persons to participate in this rulemaking proceeding by submitting comments containing relevant information, data, or views and indicated that we may later amend the rule based on comments received.

PHMSA received comments on the interim final rule from ten organizations, including industry associations, individual pipeline operators, and a state pipeline safety representative. Most comments expressed strong support for the rulemaking action itself or for particular aspects of the interim final rule. For example, one commenter stated that it ''applauds and supports the Interim Rule as an important new tool to proactively address pipeline safety issues before they become imminent hazards.'' Another commenter praised the informal consultation process set forth in the rule as a ''forward thinking and cost-effective alternative for examining and addressing safety concerns.''

These and other commenters also questioned certain aspects of the interim rule, in some cases suggesting modifications to the regulatory text. PHMSA reviewed these comments and used them in developing this final rule. The following is a discussion of the comments by issue.

I. Address Updates and Form Filing Instructions

One commenter representing a state pipeline safety program pointed out that the interim final rule left various discrepancies in address-updates and form filing instructions in parts 191–199.

Response: PHMSA appreciates the commenter's careful review and agrees that the address and form filing modifications identified by the commenter should have been made in the interim rule. These remaining address corrections and other modifications are included in this final rule.

II. Safety Orders

Need for Prior Notice and Comment on Proposed Actions Not Expressly Set Forth in the Statute

Several commenters pointed out that the interim rule (§ 190.239(a)) identifies among the corrective actions that PHMSA may prescribe in a safety order certain activities (specifically, ''risk assessment'', ''risk control'', ''data integration'', and ''information management'') that are not expressly authorized in the statute (49 U.S.C. 60117(l)(1)). These commenters contend that full notice and comment proceedings would be needed to include these terms in the regulatory text. The Association of Oil Pipelines and American Petroleum Institute express concern that including these actions ''opens operators to potentially significant and unbounded actions with no certainty of beneficial outcome, limitations on scope, or time frames.'' They suggest ''keeping to the language in the statute'' by striking these terms from the paragraph.

Response: PHMSA is revising the regulatory text in order to minimize unnecessary concern over the exercise of its new statutory authority. Although we included terms that are not in the underlying statutory language, we have no intention of imposing requirements beyond what the law allows. PHMSA understands the need to ensure a strong linkage between identified risk conditions and any mandated corrective actions, and we are committed to tailoring any mandatory actions to the nature and scope of the threat. Consistent with PHMSA's regulatory approach, we consider the acquisition and use of information key elements in the design and implementation of safety controls.

When appropriately framed and implemented, such activities can support more flexible and adaptive measures, as opposed to prescriptive remedial requirements. Accordingly, we anticipate that initial actions proposed in a Notice of Proposed Safety Order (NOPSO) will typically be diagnostic and performance-oriented, requiring the operator to evaluate conditions, conduct testing, and, on the basis of these activities, develop a work plan. Far from exceeding PHMSA's jurisdiction, we believe this approach, and the inclusion of risk assessment and related measures in specific cases, generally will tend to protect operator interests and ensure a direct nexus between risk conditions and required safety controls. As we regularly do in other enforcement actions, PHMSA will be prepared to work closely with the operator in the resolution of technical issues and development and review of work plans.

It remains our view that Congress intended PHMSA to have broad discretion to address identified pipeline risks. By its terms, the statute authorizes PHMSA, in addition to ordering physical inspection, testing, and repair, to require ''other appropriate action to remedy the identified risk condition.'' This language is broad enough to cover risk assessment, data integration and the other actions listed actions if justified in the specific circumstances. By the same token, we acknowledge that including the challenged terminology in the regulatory text is not necessary in order to preserve the full scope of PHMSA's statutory authority and that we need not consider the propriety of any particular remedial actions in this rulemaking proceeding. Accordingly, we are striking the challenged regulatory text and will address the scope of PHMSA's authority to prescribe remedial actions under § 60117(l)(1)) should the issue arise in the context of a specific enforcement case.

1. *Including Initial Proposed Actions in Notice of Proposed Safety Order.*

One commenter contended that the NOPSO should not include any proposed actions at all. The commenter stated that it believed the informal consultation was the appropriate time for the corrective actions to be determined by both parties.

Response: As we have discussed, the informal consultation process will provide an opportunity for reaching a mutually agreeable outcome, which may or may not include the specific corrective measures initially proposed by PHMSA. As a process matter, however, we must specify proposed measures in the NOPSO, in order to put the operator on due notice of the proceeding and potential adjudicatory outcome. The corrective measures proposed in the NOPSO limit the initial actions that PHMSA may order unilaterally in the event that the operator does not respond at all to a NOPSO, or if a consent agreement is not reached. As discussed above, we anticipate that actions proposed in the initial notice will typically be diagnostic- and performance-oriented, requiring the operator to evaluate conditions, conduct testing, and develop a work plan. Because the details of a work plan must be tied to the results of diagnostic evaluation and testing, we anticipate that most safety orders will require or contemplate consultation with PHMSA in the development of a specific work plan.

2. *Extent of PHMSA's Discretion to Use Safety Orders.*

Several commenters noted that under § 60117(l), PHMSA has broad discretion concerning when to use a safety order as an enforcement tool. These commenters express concern that PHMSA might use a safety order for inappropriate purposes and suggest that PHMSA coordinate detailed criteria for the use of safety orders with industry groups or advisory committees.

Response: PHMSA understands the importance of working cooperatively with operators in carrying out our shared responsibility for pipeline safety. The safety order process was carefully designed to provide for maximum cooperation between PHMSA and the affected operator. A safety order, however, is only one of several enforcement tools PHMSA may use to address a safety problem. Selections among available enforcement tools in particular cases are discretionary decisions for which PHMSA is responsible and are not coordinated with industry groups or advisory committees. PHMSA has previously outlined the basic circumstances in which it will consider use of a safety order. As we explained in the March 28, 2008, notice, PHMSA will consider initiating safety order proceedings to address identified long-term risks before they become acute and result in a hazardous condition or imminent failure. PHMSA will consider use of a safety order when it is appropriate to this purpose and will continue to use its other enforcement tools (*i.e.*, notices of probable violation, civil penalty assessments, compliance orders, corrective action orders, etc.) when their use is deemed appropriate. PHMSA does not frequently encounter situations in which a safety order would be appropriate and is unlikely to initiate more than a very few safety order proceedings per year.

It should also be emphasized that safety orders will be highly case-specific and dependent on detailed facts and circumstances in each case. Each safety order used in a given instance must be based on a finding that the pipeline facility involved has a condition that poses a pipeline integrity risk to public safety, property, or the environment and the basis for that finding must be explained in the order itself. Therefore, generic discussions about when a safety order is appropriate may not be very useful; nor is it feasible to list all types of scenarios in which we would or would not use one. Nevertheless, PHMSA is always open to hearing from operators and other stakeholders about their views on when a safety order should be used, and operators are encouraged to communicate their views to PHMSA at any time and by any means they find convenient. If an operator is aware of a long-term risk condition on its pipeline that would be suitable for a cooperative resolution with PHMSA, we encourage the operator to come forward and inform us about the situation so a determination can be made if a safety order proceeding would be appropriate.

3. *Transcription of Hearings*.

One commenter representing natural gas pipeline operators contended that, in the event a safety order proceeding was not resolved through a consent agreement and a hearing was held, a transcript should be made of all hearings, presumably at PHMSA's expense. Another industry commenter disagreed, stating that hearings should not be transcribed.

Response: An operator participating in any pipeline safety enforcement hearing may arrange for the hearing to be transcribed at its own expense. Requesting that PHMSA provide a transcript of every hearing at government expense would be a resource and budget issue for PHMSA and would have to be revisited at a later time. Accordingly, no change to this effect will be made in this final rule.

4. *Ensuring Unbiased Hearing Officers*.

One commenter acknowledged that the rule ensured that hearing officers would have ''no significant prior involvement'' in the case, but argued that the rule should be amended to prohibit hearing officers from having any prior involvement whatsoever. PHMSA is committed to ensuring that its informal enforcement hearings are fair for all concerned. Hearing officers must be unbiased and are expected to provide a full opportunity for the operator to present all information it contends is relevant to the issue(s). PHMSA's hearing officers have expertise in due process requirements, evidentiary matters, and construing laws and regulations and have consistently executed their responsibilities in a fair and professional manner. We would not disqualify a hearing officer merely because he or she heard the case mentioned or otherwise gained some general awareness of the matter. Hearing officers are trained to identify and avoid conflicts of interest, including recusal from hearing a case if a conflict of interest is present or an issue of bias has arisen for any reason. Accordingly, no change was made in the rule on this issue.

5. *Availability of Informal Consultation/Consent Agreement Option in Other Types of PHMSA Enforcement Actions*.

One commenter suggested that the rule be amended to make the informal consultation/consent agreement process established by the rule for safety order proceedings available in other PHMSA enforcement actions such as a Notice of Probable Violation (NOPV), Proposed Compliance Order, or Proposed Civil Penalty. This commenter also suggested that with respect to an operator's response options for a NOPV with a Proposed Compliance Order, an operator must choose between either objecting and providing an explanation or requesting a hearing.

Response: PHMSA's existing regulations expressly authorize consent agreement discussions in enforcement cases involving only a Proposed Compliance Order (see § 190.219(a)). The proposal to adopt a similar provision for enforcement cases involving a Proposed Civil Penalty (with or without a Proposed Compliance Order), however, is beyond the scope of this rulemaking proceeding but may be considered as part of future policy and/or rule change(s).

Although the options for responding to a NOPV were not the subject of the interim final rule, in the interests of clarity, we note that the following options are available:

- An operator that chooses not to contest any of the violations may still submit written explanations or other information it contends may warrant mitigation of the penalty or may reduce the need to order compliance actions;
- An operator that chooses to contest one or more of the violations but not request an oral hearing may still submit a written response to the allegation(s) and/or seek mitigation of any proposed penalty;
- An operator may request an oral hearing to contest the allegation(s) and/or proposed assessment of a civil penalty; or
- An operator may submit a written response to the allegation(s) and also request an oral hearing.

We appreciate the comment and have recently clarified this point in the ''Response Options'' enclosure which is sent out with enforcement notices. If the opportunity arises, we may also make a minor amendment reflecting this clarification in a future rulemaking involving § 190.209.

6. *Miscellaneous Comments on Safety Orders*.

One commenter suggested that PHMSA should consider using safety orders to address mining subsidence concerns.

Response: PHMSA is aware that in certain parts of the country, mining subsidence is a serious issue and would not rule out use of a safety order to address it. However, this involves no change in the rule.

Finally, we are making a minor change to § 190.239(b) to clarify that an operator's response to a NOPSO should be addressed to the PHMSA official who issued the NOPSO (typically the Regional Director); that the Regional Director may sign a consent agreement for PHMSA; and that a consent order must be signed by the Associate Administrator.

III. Special Permits

1. *Modification of Special Permits on an Emergency Basis.*

One commenter noted that modification or revocation of a special permit without prior notice and hearing should only be done in the event of a true safety problem or emergency.

Response: PHMSA agrees and believes that this is clearly reflected in the rule. Accordingly, no change was necessary in the rule on this issue.

2. *Modification or Revocation of a Special Permit for Non-Compliance with a Term or Condition.*

One commenter expressed concern that the word ''material'' does not precede the words ''term or condition'' in § 190.341(h)(1)(v) and, accordingly, that the interim final rule could be read to permit revocation of a special permit based on a clerical error.

Response: PHMSA understands that pipeline infrastructure projects involve major investment decisions based to some degree on reliance on special permits and that modification or revocation is a serious matter. PHMSA has no history of modifying or revoking special permits for clerical errors or other immaterial or frivolous reasons, and nothing in the rule suggested a change in policy. However, in order to prevent any conceivable misunderstanding, and for the sake of consistency with subparagraph (ii) of this section, we are adding the word ''material'' in this final rule. Moreover, it is worth noting that PHMSA's enforcement remedies for noncompliance with a special permit are not limited to modification or revocation of the permit under the final rule. A special permit is a form of agency order, the violation of which may subject the operator to civil penalties and other remedies pursuant to 49 CFR 190.221. Because a holder of a special permit is not operating under the rule that was waived, it is obligated to adhere to all of the terms and conditions of its special permit.

This commenter also stated its view that modification or revocation of a special permit for non-compliance with a term or condition should be limited to the affected pipeline segment as opposed to the entire line.

Response: PHMSA considers such issues on a case-by-case basis and makes a determination concerning the proper scope of any revocation or modification based on the nature and severity of the non-compliance and PHMSA's assessment of the actions necessary to ensure safe operation. If an operator contends that PHMSA's enforcement action should be confined to a smaller portion of its line, with the exception of emergencies, under § 190.341(h)(2), the operator will have the opportunity to show cause for narrower relief. Accordingly, no change was made in the rule on this issue.

3. *Handling of Confidential Materials.*

One commenter suggested that materials submitted to PHMSA, that the applicant designates as confidential, should be protected pending PHMSA's decision whether the materials qualify for confidential treatment.

Response: This reflects current practice, and nothing in the rule suggests that PHMSA would do otherwise. PHMSA intends to continue this practice to the extent consistent with DOT policy and applicable law. Accordingly, no change was made in the rule on this issue.

4. *Compliance Enforcement While Special Permit Application Is Pending.*

One commenter suggested that PHMSA should include a ''safe harbor'' or ''permit shield'' that would prohibit PHMSA from citing an operator for non-compliance with a regulation pending review and consideration of a related special permit application.

Response: We understand that an operator who has come forward with a special permit application might be concerned about being cited for non-compliance while its application is pending. Likewise, we acknowledge that specific circumstances might warrant forbearance of enforcement action pending consideration of a special permit application, as where the operator has in good faith implemented alternative safety controls and when strict compliance with an otherwise applicable requirement would be unduly burdensome or unreasonable. However, operators must recognize that failure to comply with an applicable regulatory requirement is not itself a basis for seeking a special permit and necessarily exposes an operator to some risk of enforcement. PHMSA reviews these circumstances on a case-by-case basis and has the discretion to conduct enforcement or refrain from doing so. PHMSA will not enact a blanket prohibition on its exercise of enforcement authority based on the pendency of a special permit application. Accordingly, no change was made in the rule on this issue.

5. *Special Permits Without an End Date.*

One commenter sought clarification that renewal does not apply to special permits without an end date.

Response: PHMSA agrees, and nothing in the rule would suggest otherwise. Accordingly, no change was necessary in the rule on this issue.

6. *Availability of Informal Consultation/Hearing Option in Special Permit Proceedings.*

One commenter suggested that the informal consultation and hearing process used for safety orders should also be used for special permit proceedings.

Response: PHMSA recognizes the importance of working closely with special permit applicants and communicates extensively with applicants about information that may be needed by PHMSA to process the application and about the kinds of alternative measures that would be needed to ensure an adequate level of safety. Since special permits already involve extensive informal (technical) consultations between PHMSA and the applicant and because there is also an opportunity for (paper) hearing in the special permit process, it is unnecessary to make any changes to the rule on this issue.

7. *Miscellaneous Comments on Special Permits.*

One commenter representing local gas distribution companies (LDCs) voiced concern about the length of time it has historically taken to obtain special permits for gas utilities from the responsible State agencies and commissions. The commenter also suggested that PHMSA should work with the LDC trade associations and State regulators to develop guidance for issuing emergency special permits for predictable situations such as severe winter conditions. Another commenter pointed out that gas LDCs often develop long-term remedial plans with the State commissions.

Response: States handle special permits for gas distribution systems, and State proceedings are not part of this rule. PHMSA has been working with the States to help them develop guidance for issuing emergency special permits and will continue to assist the States on these issues. Nothing in the rule affects the ability of LDCs to develop long-term

remedial plans with the State commissions.

Finally, we are making a minor change to § 190.341(c) to clarify that the information needed by PHMSA to process a special permit application may include environmental information where necessary.

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 (OMB). This final rule is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). Because this rule conforms agency practice and procedure to reflect current public law and does not impose any new substantive requirements on operators or the public, it has no significant 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 impacts on federalism sufficient 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 conforms 49 CFR part 190 to the PIPES Act, updates the part 190 procedures to reflect current public law, and reflects the relocation of PHMSA headquarters, and will have no direct or indirect economic impacts for government units, businesses, or other organizations, I certify that this 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 and imposes no 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 objectives of the rule.

H. Environmental Assessment

Because it imposes no new substantive requirements on operators or the public, no significant environmental impacts are associated with this final rule.

List of Subjects

49 CFR Part 190

Administrative practice and procedure, Penalties.

49 CFR Part 191

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 192

Pipeline safety, Fire prevention, Security measures.

49 CFR Part 193

Pipeline safety, Fire prevention, Security measures, and Reporting and recordkeeping requirements.

49 CFR Part 194

Oil pollution, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

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

49 CFR Part 199

Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation.

■ For the reasons discussed in the preamble, the interim rule amending 49 CFR parts 190, 191, 192, 193, 194, 195, and 199 which was published at 73 FR 16562 on March 28, 2008, is adopted as a final rule with the following amendments:

PART 190—PIPELINE SAFETY PROGRAMS AND RULEMAKING PROCEDURES

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

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

§ 190.239 [Amended]

■ 2. Section 190.239 is amended as follows:

■ a. Paragraph (a) is amended by removing the phrase ''risk assessment, risk control, data integration, information management,'' from the last sentence.

■ b. Paragraph (b)(1) is amended by revising the last sentence to read as set forth below.

■ c. Paragraph (b)(2) is amended by replacing the word PHMSA the third time it appears with the words ''Regional Director'' and replacing the word ''PHMSA'' the fourth time it appears with the words ''Associate Administrator.''

§ 190.239 Safety orders.

(b) * * *

(1) * * * An operator receiving a notice will have 30 days to respond to the PHMSA official who issued the notice.

§ 190.341 [Amended]

■ 3. Section 190.341 is amended as follows:

■ a. Remove the word ''and'' at the end of paragraph (c)(7) and add the word ''and'' to the end of paragraph (c)(8).

■ b. Add paragraph (c)(9) and revise paragraph (h)(1)(v) to read as follows:

§ 190.341 Special permits.

* * * * *

(c) * * *

(9) Any other information PHMSA may need to process the application including environmental analysis where necessary.

* * * * *

(h) * * *

(1) * * *

(v) The holder has failed to comply with any material term or condition of the special permit.

* * * * *

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

■ 4. 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.

§ 191.7 [Amended]

■ 5. The first sentence of § 191.7 is amended by adding the words ''the Information Resources Manager,'' before ''PHP–10,'' and by adding ''–0001'' to the zip code ''20590''. and the first sentence of 191.7 is also amended by inserting a comma after the word ''Avenue.''

§ 191.27 [Amended]

■ 6. In § 191.27, paragraph (b) is amended by: adding the words ''Office of Pipeline Safety,'' before the words ''Pipeline and Hazardous Materials Safety Administration'', adding the words ''Information Resources Manager,'' before ''PHP–10,''; and adding ''–0001'' to the zip code ''20590''.

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

■ 7. 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.

§ 192.7 [Amended]

■ 8. In § 192.7, paragraph (b) is amended by adding the words ''Office of Pipeline Safety,'' before the words ''Pipeline and Hazardous Materials Safety Administration,'' and adding ''20590–0001'' after the words ''Washington, DC.''

§ 192.727 [Amended]

■ 9. In § 192.727, paragraph (g)(1) is amended by:

■ a. Adding the words ''Office of Pipeline Safety,'' before the words ''Pipeline and Hazardous Materials Safety Administration,'';

■ b. Adding ''Information Resources Manager,'' before ''PHP–10,'';

■ c. Adding ''–0001'' to the zip code ''20590''.

§ 192.949 [Amended]

■ 10. In § 192.949, paragraph (a) is amended by moving the words ''Information Resources Manager,'' from their current position and placing them before ''PHP–10,'' and by adding ''–0001'' to the zip code ''20590''.

§ 192.951 [Amended]

■ 11. In § 192.951, paragraph (a) is amended by adding the words ''Information Resources Manager,'' before ''PHP–10,'' and by adding ''–0001'' to the zip code ''20590''.

PART 193—LIQUIFIED NATURAL GAS FACILITIES: FEDERAL SAFETY STANDARDS

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

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

§ 193.2013 [Amended]

■ 13. In § 193.2013, paragraph (b) is amended by adding ''20590–0001'' after the words ''Washington, DC.''

PART 194—RESPONSE PLANS FOR ONSHORE OIL PIPELINES

■ 14. 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.

§ 194.119 [Amended]

■ 15. In § 194.119, paragraph (a) is amended by adding the words ''Office of Pipeline Safety'' before the words ''Pipeline and Hazardous Materials Safety Administration.''

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 16. 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.

§ 195.3 [Amended]

■ 17. In § 195.3, paragraph (b) is amended by adding the words ''Office of Pipeline Safety,'' before the words ''Pipeline and Hazardous Materials Safety Administration,'' by adding the words ''U.S. Department of Transportation'' following the words ''Pipeline and Hazardous Materials Safety Administration'' and by adding the zip code ''20590–0001'' following the words ''Washington, DC.''

§ 195.52 [Amended]

■ 18. In § 195.52, paragraph (b) is amended by removing the words ''267–2675,'' and adding in their place ''(202) 372–2428,'' and by adding the zip code ''20590–0001'' after ''Washington, DC''.

§ 195.57 [Amended]

■ 19. In § 195.57, paragraph (b) is amended by adding the words ''Office of Pipeline Safety'' before ''Pipeline and Hazardous Materials Safety Administration,'' and by adding ''Information Resources Manager'' before ''PHP–10.''

§ 195.58 [Amended]

■ 20. Section 195.58 is amended by removing the words ''the Information Resources Manager,''; removing the words ''Room 7128, 400 Seventh Street, SW.,'' and adding in their place ''Information Resources Manager, PHP–10, 1200 New Jersey Avenue, SE.,''; and by adding ''–0001'' to the zip code ''20590''.

§ 195.59 [Amended]

■ 21. In § 195.59, paragraph (a) is amended by adding the words ''Office of Pipeline Safety,'' before ''Pipeline and Hazardous Materials Safety Administration,''; adding the words ''Information Resources Manager,'' before ''PHP–10,''; and adding ''–0001'' to the zip code ''20590''.

§ 195.62 [Amended]

■ 22. Section 195.62 is amended by removing the words ''Information Resources Manager, Office of Pipeline Safety, Department of Transportation, Washington, DC 20590.'' and adding the words ''Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Information Resources Manager, PHP–10, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.'' in their place.

PART 199—DRUG AND ALCOHOL TESTING

■ 23. 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.

§ 199.7 [Amended]

■ 24. In § 199.7, paragraph (a) is amended by: adding ''U.S.'' before

''Department of Transportation,''; adding ''1200 New Jersey Avenue, SE'' before ''Washington, DC''; and adding ''–0001'' to the zip code ''20590''.

§ 199.229 [Amended]

■ 25. Section 199.229(c) is amended by adding ''–0001'' to the zip code.

Authority: 49 U.S.C. 60101 *et seq.*

Issued in Washington, DC on January 9, 2009.

Carl T. Johnson,

Administrator.

[FR Doc. E9–628 Filed 1–15–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 356, 365, and 374

[Docket No. FMCSA–2008–0235]

RIN 2126–AB16

Elimination of Route Designation Requirement for Motor Carriers Transporting Passengers Over Regular Routes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA discontinues the administrative requirement that applicants seeking for-hire authority to transport passengers over regular routes submit a detailed description and a map of the route(s) over which they propose to operate. The Agency will register such carriers as regular-route carriers without requiring the designation of specific regular routes and fixed end-points. Once motor carriers have obtained regular-route, for-hire operating authority from FMCSA, they will no longer need to seek additional FMCSA approval in order to change or add routes. Each registered regular-route motor carrier of passengers will continue to be subject to the full safety oversight and enforcement programs of FMCSA and its State and local partners.

DATES: This rule is effective March 17, 2009. The compliance date for this rule is July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Regulatory Development Division, (202) 366–5370 or by e-mail at: *FMCSAregs@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of the Rulemaking

FMCSA is discontinuing the administrative requirement that motor carriers must describe specific routes and provide maps of these routes when seeking authority to provide regular-route, for-hire transportation of passengers in interstate commerce. Except for carriers who are public recipients of governmental assistance, regular-route passenger carriers will be issued motor carrier certificates of registration that are not route specific.

Designation of regular routes in motor carrier operating authority is not currently required by statute and administratively discontinuing this requirement will streamline the registration process by eliminating the need for motor carriers to file new applications when seeking to change or expand their routes. It will also benefit new entrants by simplifying the OP–1(P) application for operating authority. Designation of regular routes is an administrative requirement associated with the economic regulation of the passenger carrier industry. With the elimination of certain economic regulations beginning in 1980, the Agency believes continuing the practice of approving applications for changing and adding routes is unnecessary and offers no additional safety benefits to the public or the commercial passenger carrier community.

However, the Agency will continue to require public recipients of governmental assistance to designate specific routes when applying for regular-route authority because 49 U.S.C. 13902(b)(2)(B) permits persons to challenge specific regular-route transportation service provided by public entities on the ground that authorizing such service is not consistent with the public interest. Eliminating the route designation requirement in these circumstances would prevent the Agency from evaluating proposed transportation services under the public interest standard, in violation of its statutory mandate.

This final rule amends several FMCSA regulations that reference authorized routes or points of service in order to make them consistent with the Agency's discontinuation of the route designation requirement. The OP–1(P) application form will also be changed to eliminate the current route-designation and mapping requirements. Because changes to the OP–1(P) form must be approved by the Office of Management and Budget (OMB), and FMCSA plans to seek approval of additional modifications to the form in response to recent legislative changes unrelated to route designation requirements, the OMB approval process is expected to take several months. As a result, FMCSA will not implement the new procedures until 180 days after publication of this final rule.

II. Legal Basis for the Rulemaking

The Motor Carrier Act of 1935 (MCA) (Pub. L. 74–255, 49 Stat. 543, Aug. 9, 1935) authorized the Interstate Commerce Commission (ICC) to regulate motor carriers by, among other things, issuing certificates of operating authority to motor carriers of property and passengers operating in interstate commerce. Section 207(a) of the MCA stated that ''no certificate shall be issued to any common carrier of passengers for operations over other than a regular route or regular routes, and between fixed termini [end-points], except as such carriers may be authorized to engage in special or charter operations.'' Section 208(a) of the MCA required that certificates issued to regular-route passenger carriers specify the routes, end-points, and intermediate points to be served under the certificate. Section 208(b) permitted occasional deviations from authorized routes, if permitted by ICC regulations.

These MCA provisions were subsequently recodified without substantive change as 49 U.S.C. 10922(f)(1)–(3). However, they were repealed by the ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 888, Dec. 29, 1995). The statutory registration requirements specific to passenger carriers are now codified at 49 U.S.C. 13902(b). Section 103 of the ICCTA retained some of the former registration requirements of section 10922 applicable to regular-route passenger carriers but eliminated many others, including 49 U.S.C. 10922(f)(1)–(3).

The ICCTA also transferred the ICC's authority to issue for-hire motor carrier operating authority to the Secretary of Transportation (Secretary). Section 101 of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1750, Dec. 9, 1999) (MCSIA) created the FMCSA and directed the Administrator of the FMCSA to carry out the duties and powers vested in the Secretary by Title 49 United States Code, Chapters 133 through 149. These powers include the authority of the Secretary, under 49 U.S.C. 13301(a), to prescribe regulations governing registration requirements for motor carriers transporting passengers in interstate commerce for compensation. In addition to the statutory delegation, the Secretary has administratively delegated this authority to the FMCSA Administrator under 49 CFR 1.73(a).