

**Note.**—If other than a 20-ml aliquot of sample is used for analysis, then the amount of absorbing solution in the blank and standards must be adjusted such that the same amount of absorbing solution is in the blank and standards as is in the aliquot of sample used. Calculate the spectrophotometer calibration factor as follows:

$$K_c = \frac{\sum_{i=1}^N M_i A_i}{\sum_{i=1}^N A_i^2} \quad (\text{Eq. 7.1.})$$

Where:

$M_i$  = Mass of  $\text{NO}_2$  in standard  $i$ ,  $\mu\text{g}$ .

$A_i$  = Absorbance of  $\text{NO}_2$  standard  $i$ .

$N$  = Total number of calibration standards.

For the set of calibration standards specified here, Equation 7-1 simplifies to the following:

$$K_c = 50 \frac{A_1 + 2A_2 + 3A_3 + 4A_4}{A_1^2 + A_2^2 + A_3^2 + A_4^2} \quad (\text{Eq. 7.2})$$

#### 6. Calculations

Same as Method 7, Sections 6.1, 6.2, and 6.4 with the addition of the following:

##### 6.1 Total $\mu\text{g NO}_2$ Per Sample:

$$m = 5K_c AF \quad (\text{Eq. 7-3})$$

Where:

$5 = 100/20$ , the aliquot factor.

**Note.**—If other than a 20-ml aliquot is used for analysis, the factor 5 must be replaced by a corresponding factor.

##### 6.2 Relative Error (RE) for Quality Assurance Audits.

$$RE = \frac{C_d - C_a}{C_a} \times 100 \quad (\text{Eq. 7-4})$$

Where:

$C_d$  = Determined audit concentration.

$C_a$  = Actual audit concentration.

#### 7. Bibliography

1. National Institute for Occupational Safety and Health Recommendations for Occupational Exposure to Nitric Acid. In: Occupational Safety and Health Reporter. Washington, D.C. Bureau of National Affairs, Inc. 1976. p. 149.

2. Rennie, P.J., A.M. Sumner, and F.B. Basketter. "Determination of Nitrate in Raw, Potable, and Waste Waters by Ultraviolet Spectrophotometry." "Analyst." Vol. 104. September 1979. p. 837.

[FR Doc. 85-9715 Filed 4-22-85; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Parts 153 and 154

[CGD 81-052]

#### Compliance Procedures for Self-Propelled Foreign-Flag Vessels Carrying Hazardous Liquids and Bulk Liquefied Gases

##### Correction

In FR Doc. 85-5177 beginning on page 8730 in the issue of Tuesday, March 5, 1985, make the following corrections:

1. On page 8733, in the first column, in § 153.9, after the introductory text of paragraph (a), insert the following paragraph (1):

"(1) An additional classification society statement that the vessel complies with § 153.530 (b), (d), and (p)(1) if a person desires a Certificate of Compliance endorsed with the name of an alkylene oxide; and"

2. On page 8734, in the first column, in § 153.809 (c)(4), in the second line, "are board" should read "are on board".

3. On page 8734, in the third column, in footnote 1 to § 154.5(a), in the third line, "Subchapter C" should read "Subchapter O".

4. On page 8734, in the third column, in § 154.151(b)(1), in the fourth line, "to the" should read "to a".

BILLING CODE 1505-01-M

#### Research and Special Programs Administration

#### 49 CFR Part 195

[Amdt. 195-33, Docket PS-80]

#### Transportation of Hazardous Liquids by Pipeline; Regulation of Intrastate Pipelines

**AGENCY:** Materials Transportation Bureau (MTB), DOT.

**ACTION:** Final rule.

**SUMMARY:** The existing Federal safety standards for pipelines transporting hazardous liquids apply to pipelines operating in interstate or foreign commerce. This final rule extends the applicability of these standards to include pipelines transporting hazardous liquids that affect interstate or foreign commerce, sometimes called intrastate pipelines. The Hazardous Liquid Pipeline Safety Act of 1979 (HLPESA) requires this action to provide for consistent State regulation of risks associated with intrastate transportation of hazardous liquids.

**EFFECTIVE DATES:** The effective date of this final rule is October 21, 1985, except that the effective date of § 195.402 with respect to intrastate pipelines is April 23, 1987.

#### FOR FURTHER INFORMATION CONTACT:

Frank Robinson, (202) 426-2392, regarding the content of this final rule, Barbara Betsock (202) 755-4972 concerning Appendix A, or the Dockets Branch (202) 426-3148, regarding other information in the docket.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 203(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPESA) (49 U.S.C. 2002) requires the Secretary of Transportation to establish minimum Federal safety standards for the transportation of hazardous liquids by pipeline in or affecting interstate or foreign commerce. Once the Federal standards are established, section 205 of the HLPESA provides for State adoption and enforcement of the Federal standards with respect to "intrastate pipelines," or pipelines to which the HLPESA applies which are not used in interstate or foreign commerce. Although State safety regulation of interstate pipelines is preempted, the HLPESA permits States to adopt additional or more stringent safety standards for intrastate pipelines, provided they are compatible with the Federal standards (49 U.S.C. 2002(d)).

On July 20, 1981, MTB reissued the safety standards in 49 CFR Part 195 under section 203 of the HLPESA, and applied the standards to pipelines transporting petroleum, petroleum products, or anhydrous ammonia in interstate or foreign commerce (46 FR 38357). At that time, MTB decided to defer further application of the standards to similar intrastate pipelines for at least 2 years, allowing interested State agencies time to prepare for participation under the section 205 program.

Thereafter, MTB solicited State participation under section 205 and learned that 15 States had enabling legislation for the safety regulation of intrastate pipelines, while 7 other States were considering it.

Then on March 26, 1984, the MTB published a notice of proposed rulemaking (NPRM), proposing that the existing Federal safety standards (49 CFR Part 195), with minor modifications, be extended to cover intrastate pipelines (49 FR 11226). It was estimated that about 11,000 miles of pipeline would be affected by the proposal, 88 percent of which are within States that either

have enabling legislation or are seeking it.

Six associations (North Texas Oil and Gas Association, West Central Texas Oil and Gas Association, American Petroleum Institute, Pennsylvania Oil and Gas Association, Rocky Mountain Oil and Gas Association, and the Texas Mid-Continental Oil and Gas Association), three state agencies (Texas Railroad Commission, Iowa State Commerce Commission, and the Public Utility Commission of Oregon), together with twenty-three pipeline operators responded to the NPRM.

The purpose of the NPRM and of this final rule is not only to control the risk presented by intrastate hazardous liquid pipelines, but also to provide, through minimum Federal safety standards, continuity among State regulations. Safety regulation of intrastate hazardous liquid pipelines is an activity that is open to all States. Without the limited Federal preemption of State regulation provided by issuance of the Federal standards, the potential of inconsistent regulation of intrastate pipelines from State to State could have an undesirable effect on operators with intrastate pipelines in more than one State. Further, the preemptive language of the HLPSPA matches similar preemptive provisions of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 *et. seq.*) The two statutes show a clear Congressional intent to provide a uniform Federal policy for the regulation of interstate and intrastate pipelines transporting hazardous materials in gas or liquid form.

#### General comments

Most of the commenters recognized that section 203(a) of the HLPSPA requires the safety regulation of intrastate pipelines as stated in the NPRM.

However, one of the associations opposed regulation of intrastate pipelines, arguing that there is no significant safety or health problem posed by these pipelines. Also, one operator argued that the associated costs and benefits do not justify regulation of intrastate pipelines. MTB does not agree with these two commenters. Intrastate pipelines carry the same hazardous liquids as interstate pipelines, the characteristics of which are flammability, toxicity, or explosivity. Because intrastate pipelines have been generally designed, constructed, tested, maintained, and operated in the same manner as interstate pipelines, it is reasonable to assume that the results of accidents should not differ appreciably from those of interstate pipelines. While the accident rate for interstate pipelines

has been excellent, the hazardous characteristics of the liquids and the potential for harm if an accident should occur render regulation appropriate. Furthermore, Congress has made it clear that such regulation is desirable. In addition, the Final Evaluation for this rulemaking, titled "Assessing the Impact of Federal Regulation of Intrastate Hazardous Liquid Pipelines," shows a net benefit from Federal safety regulation of intrastate pipelines. Due to reduction in the number of expected accidents following regulation, cost reduction of between \$120,000 and \$950,000 a year should be achieved, depending on the number of States that begin regulating intrastate pipelines. The evaluation is available for inspection in the docket.

On December 7, 1983 a draft of the NPRM was discussed by the Technical Hazardous Liquid Pipeline Safety Standards Committee at a meeting in Washington, D.C. The Committee in its report found the proposed rules to be technically feasible, reasonable and practicable. (A copy of the Committee's report is available in the docket for public inspection and copying). The Committee recommended that the NPRM be sent to various oil and gas associations, and this was done after it was published in the *Federal Register*. The Committee also recommended that MTB seek comments from the public concerning appropriate definitions of "rural", "non-rural", "gathering systems", and "significant economic impact". Except for "significant economic impact" public comments were solicited for these definitions in the NPRM, as further discussed below under the subheading "Gathering lines." A definition for "significant economic impact" (10 percent or more of current cash flow) was developed by MTB and was used in the Draft and Final Evaluation of the economic impact of this rulemaking.

The Committee made a further recommendation concerning cathodic protection. This recommendation is discussed below under the Section § 195.414 heading.

#### Choice of Standards

None of the commenters argued that Part 195 is inappropriate for intrastate pipelines. Most agreed with the MTB that Part 195 is the best choice. MTB's experience with the pipeline industry shows that intrastate pipelines have been generally designed, constructed, tested, maintained, and operated in the same manner as interstate pipelines. Further, most intrastate operators voluntarily utilize the current Federal safety standards now applicable to

interstate facilities or the industry code, ANSI B31.4, upon which the Federal standards were based, totally or in part as their safety standards. Consequently, in this final rule, MTB adopts the existing Federal safety standards in Part 195, which apply to interstate pipelines transporting petroleum, petroleum products, or anhydrous ammonia, as appropriate safety standards for intrastate pipelines carrying these commodities.

#### Gathering Lines

In an effort to better delineate in §195.1(b)(4) those rural, onshore gathering lines that are not subject to the HLPSPA, MTB proposed minor clarifying changes to the language of §195.1(b)(4). Since there were no adverse comments, this section is revised as proposed.

MTB also solicited comments on the distinction between "rural" and "nonrural" and the points that mark the beginning and end of a gathering line in order to facilitate the application of §195.1(b)(4) to intrastate pipelines. Thirty-four commenters responded with varying concepts of the points that mark the beginning and end of a gathering line.

In addition, MTB took the gathering line issue before the Technical Hazardous Liquid Pipeline Safety Standards Committee on November 1, 1984, and again on February 27, 1985, to obtain the views of the Committee. Although the Committee did not take formal action, views expressed by individual Committee members have been considered in this rulemaking.

A few Committee members together with the majority of industry commenters considered flow lines to be part of production rather than transportation. (Flow lines are found at production sites and are used to move produced hydrocarbons from a well to a point where gas, oil and water are separated.) Other Committee members were uncertain about whether flow lines were normally considered to be part of production, but expressed concerns about a possible unneeded extension of Federal regulation. Only two commenters considered a gathering line to extend to the well head.

Perhaps the most significant concern expressed at the Committee meetings was that if flow lines were considered part of gathering lines, and not part of onshore production, numerous small intrastate entities that operate production facilities containing flow lines in non-rural areas would become subject to Part 195. This is so because, as proposed, Part 195 would not apply to

"onshore production" but would cover certain gathering lines in non-rural areas in conformity with the limits of the HLPESA. Committee members further stated that many small entities operate flow lines in conjunction with marginal wells, and the cost of compliance with Part 195 for the flow lines could make production from these wells uneconomical.

The NPRM stated that the proposed intrastate regulations "will not have a significant economic impact on a substantial number of small entities." In fact, the Draft Evaluation predicted the proposal would "affect no small firms at all," and this was certainly MTB's intent in issuing the NPRM. It seems now, however, that the evaluation did not consider the impact on the many small entities that might be affected if MTB were to consider non-rural gathering lines to encompass flow lines or, conversely, MTB did not consider "onshore production" to encompass flow lines.

In conclusion, there is no information in the record indicating a pressing safety need to regulate flow lines. There is nothing (such as a need to facilitate interstate commerce) to indicate an existing, pressing need for the consistency of regulation that imposition of uniform Federal minimum standards would bring to flow lines. Furthermore, a reading of the legislative history of the HLPESA tends to support a conclusion that Congress intended flow lines to be excluded from regulation as part of onshore production. Finally, MTB's Draft Evaluation did not consider the impact on small entities if flow lines were considered part of gathering lines. Therefore, §195.1(b)(6) has been amended to clearly indicate that onshore flow lines are considered part of production facilities and are excluded from the applicability of the Part 195 regulations. This change should make Part 195 comport with the Final Evaluation's conclusion that there is no impact on small entities. The change should not affect interstate pipelines because it is doubtful that any flow lines operate in interstate commerce or that Part 195 applies to any that do. States which do have some special local concerns about the safety of flow lines would remain free to address them through State regulation.

Following review of comments received on the distinction between rural and nonrural and the point that marks the end of a gathering line and the beginning of a trunkline, MTB recognizes that the existing regulatory language for the exclusion may not provide the clarity desirable in a

regulation. In the near future, MTB intends to propose language changes or definitions that will provide the necessary clarity.

*Section 195.1 Applicability, Section 195.2 Definitions.*

The NPRM proposed to extend the applicability of Part 195 to intrastate pipelines by addition of the term "in or affecting interstate or foreign commerce" in §195.1(a). At the same time, MTB proposed to delete the §195.1(a)(1) reference to the jurisdiction of the Federal Energy Regulatory Commission [FERC]. The FERC reference and the §195.1(a)(2) reference to pipeline facilities on the Outer Continental Shelf have been used to delineate interstate pipeline facilities to which Part 195 applies. Deletion of the FERC reference and the proposed new wording of §195.1(a) were intended to state the applicability of Part 195 in terms that comport with the language of the HLPESA.

Two new definitions were proposed in §195.2 for "Interstate pipeline" and "Intrastate pipeline" to distinguish the two terms for purposes of certain changes proposed to Part 195 to accommodate coverage of intrastate pipelines.

Only one commenter argued against deletion of the FERC reference. This commenter said that the proposed method of identifying jurisdictional pipelines and definitions for interstate and intrastate pipelines would (1) confuse rather than clarify, the distinction between interstate and intrastate pipelines (2) encourage States to develop regulations disparate from Part 195 and apply these regulations segmentally to integral parts of an interstate pipeline system, seriously impeding the safety and efficiency of pipeline operations, and (3) create conflicts which can only be resolved by protracted and wasteful litigation. The commenter recommended a definition of "Interstate pipeline" as follows:

Interstate Pipeline means a pipeline which is used in the transportation of hazardous liquids in interstate or foreign commerce, or is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Authority of the Interstate Commerce Act.

The MTB recognizes the potential for confusion cited by this commenter. It believes, however, that the best way to avoid these difficulties is to base the Part 195 jurisdictional reach and definitions on the language of the HLPESA as much as possible, without adding the complicating factor of determining whether pipeline facilities are subject to FERC jurisdiction. The

issue of FERC jurisdiction often is not readily resolvable, because FERC's list of facilities on record does not definitively represent the pipeline facilities that are legally "subject to" its jurisdiction. Consequently, although MTB has not adopted the commenter's recommended definition, for consistency with the HLPESA, the proposed definitions of "interstate pipeline" and "intrastate pipeline" have been modified.

As noted in the NPRM, MTB will continue to use evidences of FERC jurisdiction to provide some indication whether a particular facility is interstate or intrastate. In recognition of questions that have arisen in the past through use of a FERC reference and of potential problems of application of the definitions, MTB believes it appropriate to state its interpretation of the jurisdictional delineations provided in the HLPESA and to provide guidelines on how MTB will use the evidences of FERC jurisdiction in applying the definitions. Accordingly, MTB will attach a statement of agency policy and interpretation on the delineation between Federal and State jurisdiction to Part 195 as Appendix A.

Because the new Appendix A is not part of the regulation itself, but a statement of agency policy and interpretation, it is published without need for notice and comment. However, comments are invited on possible refinements to the examples given that would provide clearer guidance or on possible situations that do not appear to be addressed in the examples. Comments received before June 1, 1985, which should be addressed to the Office of Chief Counsel, Research and Special Programs Administration, will be considered in any future refinements of Appendix A.

*Section 195.300 Scope.*

As proposed in the NPRM, § 195.300(d) is added to specifically include onshore steel intrastate pipelines constructed before October 21, 1985 that transport highly volatile liquids.

*Section 195.302(b) General Requirements.*

One commenter recommended that the one year period for planning and scheduling hydrostatic tests under §195.302(b)(2)(i) be lengthened from one year to two years. The one year planning and scheduling period was adequate when this rule was adopted for interstate pipelines and, in the absence of information to the contrary,

the MTB believes the one year period is adequate for intrastate pipelines.

#### Section 195.401.

One commenter recommend that § 195.401(c)(3) refers to the date design was begun rather than the date construction was begun or, alternatively, to delay the effective date until 180 days after publication. The commenter argued that the proposed rule could result in wasted money on design work and materials procurement for pipelines in the design phase at the time the rule is published. In order to avoid this potential waste, the effective date of this final rule has been set as 180 days after publication, and this date is reflected in § 195.401(c)(3). The six month period should also allow intrastate operators time to fully prepare for compliance with Part 195 operation and maintenance rules in addition to design, construction and testing requirements. Further, additional time for compliance with §§ 195.402 and 195.406 is discussed below. In addition, the six-month period allows time for State agencies and MTB to complete the process of certification or agreement under section 205 of the HLPESA.

#### Section 195.402 and 195.406.

No adverse comments were received regarding these sections. The effective date of § 195.402 is postponed until 2 years after publication as proposed in the NPRM. The amendment to § 195.402 is adopted as proposed, except that the effective date is delayed until 180 days after publication as discussed above under § 195.402.

#### Section 195.414.

One commenter recommended that the extended compliance time in § 195.414(b) should allow a period longer than 5 years where good cause is shown. However, the proposed 5-year period is adopted since it proved adequate for interstate pipelines and, in the absence of information to the contrary, should be adequate for intrastate pipelines. For good cause, a longer compliance period can be sought under the waiver provisions of Section 203 of the HLPESA.

Another commenter recommended that § 195.414(c) be clarified to specifically exclude underground storage facilities, because the methods of corrosion protection for underground storage differ from those for above ground storage and station piping. The MTB did not adopt the recommendation, however, for two reasons: (1) As stated in the NPRM, the purpose of this rulemaking is to establish identical standards for interstate and intrastate

pipelines rather than examine the need for or merits of particular standards, and (2) the MTB believes that § 195.414(c) is sufficiently broad to permit the various methods of corrosion protection.

The Technical Hazardous Liquid Pipeline Safety Standards Committee during its December 7, 1983, meeting recommended that the wording of § 195.414 be changed to require cathodic protection "effectively coated" as opposed to "coated" pipelines, because some externally coated pipelines might better fall in the category of bare pipelines due to the amount of current which would be required to achieve a protected state. This distinction applies to gas pipelines under 49 CFR 192.457, and effective coating is defined in terms of the pipeline's cathodic protection current requirements. Further, § 195.414 has historically been applied by MTB in the manner suggested by the Committee. Consequently, the wording of § 195.414 has been changed in this final rule as recommended by the Committee and to be consistent with the manner in which the rule has been applied. Also, the definition of effective coating found in § 192.457 is added to § 195.414.

#### Information Collection

The NPRM stated that the accident reporting requirements of Subpart B as well as the recordkeeping requirements of §§ 195.266, 195.310, and 195.404 are under review. A temporary exception from these requirements was proposed under § 195.1(c) for intrastate pipelines until pending revisions are completed. In Docket PS-82 (49 FR 44928, November 13, 1984), MTB proposed that revised recordkeeping and accident reporting requirements be adopted for interstate pipelines and that the revised requirements be applied to intrastate pipelines. When final rules in Docket PS-82 are issued (scheduled for early 1985), the temporary exception under § 195.1(c) will be lifted.

One state agency recommended imposing the accident reporting requirements of Subpart B and the recordkeeping requirements of § 195.404 immediately, arguing that the accident reports and the maps and records are necessary to (1) allow timely onsite accident investigation, and (2) provide information necessary for damage prevention programs.

While the MTB is fully aware of the usefulness of the accident reports as well as the maps and records, it did not adopt this recommendation. MTB believes that whatever temporary enforcement difficulties are caused by delaying adoption of the information collection requirements are small compared to the hardship that would be

caused intrastate operators by adopting the current rules and then imposing revised rules shortly thereafter.

#### Classification

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979) based on a Final Evaluation of the economic impact of this rule, a copy of which is in the docket. Based on the Evaluation, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 49 CFR Part 195

Interstate pipeline, Intrastate pipeline, Ammonia Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

#### PART 195—[AMENDED]

In view of the foregoing, the MTB amends 49 CFR Part 195 in the following manner:

1. By revising §§195.1 (a), (b)(4), and (b)(6), and adding a new paragraph (c) to read as follows:

##### §195.1 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to pipeline facilities and the transportation of hazardous liquids associated with those facilities in or affecting interstate or foreign commerce, including pipeline facilities on the Outer Continental Shelf.

(b) \* \* \*

(4) Transportation of a hazardous liquid in those parts of an onshore pipeline system that are located in rural areas between a production facility and an operator trunkline reception point;

\* \* \* \* \*

(6) Transportation of a hazardous liquid through onshore production (including flow lines), refining, or manufacturing facilities or storage or in-plant piping systems associated with such facilities;

\* \* \* \* \*

(c) Subpart B of this part and §§195.266, 195.310, and 195.404 do not apply to intrastate pipelines.

2. By adding two new definitions to §195.2 to read as follows:

##### §195.2 Definitions.

\* \* \* \* \*

*Interstate pipeline* means a pipeline or that part of a pipeline that is used in the transportation of hazardous liquids in interstate or foreign commerce.

*Intrastate pipeline* means a pipeline or that part of a pipeline to which this

part applies that is not interstate pipeline.

3. By revising §195.300 to read as follows:

**§195.300 Scope.**

This subpart prescribes minimum requirements for hydrostatic testing of the following. It does not apply to movement of pipe covered by §195.424.

- (a) Newly constructed steel pipeline systems;
- (b) Existing steel pipeline systems that are relocated, replaced, or otherwise changed;
- (c) Onshore steel interstate pipelines constructed before January 8, 1971, that transport highly volatile liquids; and
- (d) Onshore steel intrastate pipelines constructed before October 21, 1985, that transport highly volatile liquids.

4. By revising §195.302(b) to read as follows:

**§195.302 General requirements.**

(b) No person may transport a highly volatile liquid in an onshore steel interstate pipeline constructed before January 8, 1971, or an onshore steel intrastate pipeline constructed before October 21, 1985, unless the pipeline has been hydrostatically tested in accordance with this subpart or, except for pipelines subject to §195.5, its maximum operating pressure is established under §195.406(a)(5). Dates to comply with this requirement are:

- (1) For onshore steel interstate pipelines in highly volatile liquid service before September 8, 1980—
  - (i) Planning and scheduling of hydrostatic testing or actual reduction in maximum operating pressure to meet § 195.406(a)(5) must be completed before September 15, 1985; and
  - (ii) Hydrostatic testing must be completed before September 15, 1985, with at least 50 percent of the testing completed before September 15, 1983.
- (2) For onshore steel intrastate pipelines in highly volatile liquid service before April 23, 1985—
  - (i) Planning and scheduling of hydrostatic testing or actual reduction in maximum operating pressure to meet § 195.406(a)(5) must be completed before April 23, 1986; and
  - (ii) Hydrostatic testing must be completed before April 23, 1990 with at least 50 percent of the testing completed before April 23, 1988.

5. Section 195.401(c) is revised to read as follows:

**§ 195.401 General requirements.**

(c) Except as provided by § 195.5, no operator may operate any part of any of the following pipelines unless it was designed and constructed as required by this part:

- (1) An interstate pipeline on which construction was begun after March 31, 1970.
- (2) An interstate offshore pipeline located between a production facility and an operator's trunkline reception point on which construction was begun after July 31, 1977.
- (3) An intrastate pipeline on which construction was begun after October 21, 1985.

6. By revising § 195.406(a)(5) to read as follows:

**§ 195.406 Maximum Operating Pressure**

(a) \* \* \*  
 (5) In the case of onshore HVL interstate pipelines constructed before January 8, 1971, or onshore HVL intrastate pipelines constructed before October 21, 1985, that have not been tested under Subpart E of this part, 80 percent of the test pressure or highest operating pressure to which the pipeline subjected for four or more continuous hours that can be demonstrated by recording charts or logs made at the time the test or operations were conducted. (See § 195.302(b) for compliance schedules for HVL interstate pipelines in service before September 8, 1980, and for HVL intrastate pipelines in service before April 23, 1985.

7. By revising § 195.414 to read as follows:

**§ 195.414 Cathodic protection.**

- (a) No operator may operate an interstate pipeline after March 31, 1973, or an intrastate pipeline after October 19, 1988, that has an effective external surface coating material, unless that pipeline is cathodically protected. This paragraph does not apply to breakout tank areas and buried pumping station piping. For the purposes of this subpart, a pipeline does not have an effective external coating and shall be considered bare, if its cathodic protection current requirements are substantially the same as if it were bare.
- (b) Each operator shall electrically inspect each bare interstate pipeline before April 1, 1975, and each base intrastate pipeline before October 20, 1990 to determine any areas in which active corrosion is taking place. The operator may not increase its established operating pressure on a section of bare pipeline until the section has been so electrically inspected. In any areas where active corrosion is found, the operator shall provide

cathodic protection. Section 195.416 (f) and (g) apply to all corroded pipe that is found.

(c) Each operator shall electrically inspect all breakout tank areas and buried pumping station piping on interstate pipelines before April 1, 1973, and on intrastate pipelines before October 20, 1988 as to the need for cathodic protection, and cathodic protection shall be provided where necessary.

8. By adding a new Appendix A to read as follows:

**Appendix A—Delineation Between Federal and State Jurisdiction—Statement of Agency Policy and Interpretation**

In 1979, Congress enacted comprehensive safety legislation governing the transportation of hazardous liquids by pipeline, the Hazardous Liquids Pipeline Safety Act of 1979, 49 U.S.C. 2001 *et seq.* (HLPESA). The HLPESA expanded the existing statutory authority for safety regulation, which was limited to transportation by common carriers in interstate and foreign commerce, to transportation through facilities used in or affecting interstate or foreign commerce. It also added civil penalty, compliance order, and injunctive enforcement authorities to the existing criminal sanctions. Modeled largely on the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671 *et seq.* (NGPSA), the HLPESA provides for a national hazardous liquid pipeline safety program with nationally uniform minimal standards and with enforcement administered through a Federal-State partnership. The HLPESA leaves to exclusive Federal regulation and enforcement the "interstate pipeline facilities," those used for the pipeline transportation of hazardous liquids in interstate or foreign commerce. For the remainder of the pipeline facilities, denominated "intrastate pipeline facilities," the HLPESA provides that the same Federal regulation and enforcement will apply unless a State certifies that it will assume those responsibilities. A certified State must adopt the same minimal standards but may adopt additional more stringent standards so long as they are compatible. Therefore, in States which participate in the hazardous liquid pipeline safety program through certification, it is necessary to distinguish the interstate from the intrastate pipeline facilities.

In deciding that an administratively practical approach was necessary in distinguishing between interstate and intrastate liquid pipeline facilities and in determining how best to accomplish this, DOT has logically examined the approach used in the NGPSA. The NGPSA defines the interstate gas pipeline facilities subject to exclusive Federal jurisdiction as those subject to the economic regulatory jurisdiction of the Federal Energy Regulatory Commission (FERC). Experience has proven this approach practical. Unlike the NGPSA however, the HLPESA has no specific reference to FERC jurisdiction, but instead

defines interstate liquid pipeline facilities by the more commonly used means of specifying the end points of the transportation involved. For example, the economic regulatory jurisdiction of FERC over the transportation of both gas and liquids by pipeline is defined in much the same way. In implementing the HLPESA DOT has sought a practicable means of distinguishing between interstate and intrastate pipeline facilities that provide the requisite degree of certainty to Federal and State enforcement personnel and to the regulated entities. DOT intends that this statement of agency policy and interpretation provide that certainty.

In 1981, DOT decided that the inventory of liquid pipeline facilities identified as subject to the jurisdiction of FERC approximates the HLPESA category of "interstate pipeline facilities." Administrative use of the FERC inventory has the added benefit of avoiding the creation of a separate Federal scheme for determination of jurisdiction over the same regulated entities. DOT recognizes that the FERC inventory is only an approximation and may not be totally satisfactory without some modification. The difficulties stem from some significant differences in the economic regulation of liquid and of natural gas pipelines. There is an affirmative assertion of jurisdiction by FERC over natural gas pipelines through the issuance of certificates of public convenience and necessity prior to commencing operations. With liquid pipelines, there is only a rebuttable presumption of jurisdiction created by the filing by pipeline operators of tariffs (or concurrences) for movement of liquids through existing facilities. Although FERC does police the filings for such matters as compliance with the general duties of common carriers, the question of jurisdiction is normally only aired upon complaint. While any person, including State or Federal agencies, can avail themselves of the FERC forum by use of the complaint process, that process has only been rarely used to review jurisdictional matters (probably because of the infrequency of real disputes on the issue). Where the issue has arisen, the reviewing body has noted the need to examine various criteria primarily of an economic nature. DOT believes that, in most cases, the formal FERC forum can better receive and evaluate the type of information that is needed to make decisions of this nature than can DOT.

In delineating which liquid pipeline facilities are interstate pipeline facilities within the meaning of the HLPESA, DOT will generally rely on the FERC filings; that is, if there is a tariff or concurrence filed with FERC governing the transportation of hazardous liquids over a pipeline facility or if there is a tariff or concurrence filed with obligation to file tariffs obtained from FERC, then DOT will, as a general rule, consider the facility to be an interstate pipeline facility within the meaning of the HLPESA. The types of situations in which DOT will ignore the existence or non-existence of a filing with FERC will be limited to those cases in which it appears obvious that a complaint filed with FERC would be successful or in which blind reliance on a FERC filing would result in a situation clearly not intended by the HLPESA such as a pipeline facility not being subject to

either State or Federal safety regulation. DOT anticipates that the situations in which there is any question about the validity of the FERC filings as a ready reference will be few and that the actual variations from reliance on those filings will be rare. The following examples indicate the types of facilities which DOT believes are interstate pipeline facilities subject to the HLPESA despite the lack of a filing with FERC and the types of facilities over which DOT will generally defer to the jurisdiction of a certifying state despite the existence of a filing with FERC.

**Example 1.** Pipeline company P operates a pipeline from "Point A" located in State X to "Point B" (also in X). The physical facilities never cross a state line and do not connect with any other pipeline which does cross a state line. Pipeline company P also operates another pipeline between "Point C" in State X and "Point D" in an adjoining State Y. Pipeline company P files a tariff with FERC for transportation from "Point A" to "Point B" as well as for transportation from "Point C" to "Point D." DOT will ignore filing for the line from "Point A" to "Point B" and consider the line to be intrastate.

**Example 2.** Same as in example 1 except that P does not file any tariffs with FERC. DOT will assume jurisdiction of the line between "Point C" and "Point D."

**Example 3.** Same as in example 1 except that P files its tariff for the line between "Point C" and "Point D" not only with FERC but also with State X. DOT will rely on the FERC filing as indication of interstate commerce.

**Example 4.** Same as in example 1 except that the pipeline from "Point A" to "Point B" (in State X) connects with a pipeline operated by another company transports liquid between "Point B" (in State X) and "Point D" (in State Y). DOT will rely on the FERC filing as indication of interstate commerce.

**Example 5.** Same as in example 1 except that the line between "Point C" and "Point D" has a lateral line connected to it. The lateral is located entirely with State X. DOT will rely on the existence or non-existence of a FERC filing covering transportation over that lateral as determinative of interstate commerce.

**Example 6.** Same as in example 1 except that the certified agency in State X has brought an enforcement action (under the pipeline safety laws) against P because of its operation of the line between "Point A" and "Point B". P has successfully defended against the action on jurisdictional grounds. DOT will assume jurisdiction if necessary to avoid the anomaly of a pipeline subject to neither State or Federal safety enforcement. DOT's assertion of jurisdiction in such a case would be based on the gap in the state's enforcement authority rather than a DOT decision that the pipeline is an interstate pipeline facility.

**Example 7.** Pipeline Company P operates a pipeline that originates on the Outer Continental Shelf. P does not file any tariff for that line with FERC. DOT will consider the pipeline to be an interstate pipeline facility.

**Example 8.** Pipeline Company P is constructing a pipeline from "Point C" (in State X) to "Point D" (in State Y). DOT will consider the pipeline to be an interstate pipeline facility.

**Example 9.** Pipeline company P is constructing a pipeline from "Point C" to "Point E" (both in State X) but intends to file tariffs with FERC in the transportation of hazardous liquid in interstate commerce. Assuming there is some connection to an interstate pipeline facility, DOT will consider this line to be an interstate pipeline facility.

**Example 10.** Pipeline Company P has operated a pipeline subject to FERC economic regulation. Solely because of some statutory economic deregulation, that pipeline is no longer regulated by FERC. DOT will continue to consider that pipeline to be an interstate pipeline facility.

As seen from the examples, the types of situations in which DOT will not defer to the FERC regulatory scheme are generally clear-cut cases. For the remainder of the situations where variation from the FERC scheme would require DOT to replicate the forum already provided by FERC and to consider economic factors better left to that agency, DOT will decline to vary its reliance on the FERC filings unless, of course, not doing so would result in situations clearly not intended by the HLPESA.

(49 U.S.C. 2002; 49 CFR 1.53 and Appendix A of Part 1)

Issued in Washington, D.C. on April 17, 1985.

L.D. Santman,

Director, Materials Transportation Bureau.

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## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1130

[Docket No. 37130 (Sub-No. 2)]

### Special Docket Proceedings— Exemption From Letter-of-Intent Requirement Involving Amounts of \$5,000 or Less

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commission is adopting rules that eliminate the Letter-of-Intent requirement in Special Docket cases involving reparations or waiver of undercharges of \$5,000 or less. This change, as commentators assert, will save carriers, shipper, and the Commission substantial and costly paperwork and will protect the shipping public by also requiring that letters of disposition, still required of such cases, will be kept in a public file for three years.

**DATES:** Effective on May 22, 1985. We will reconsider adoption of the \$5,000 amount in lieu of the \$2,000 amount we proposed if negative comments are filed by May 13, 1985.