(m) Approval—On July 10, 1996, the Wisconsin Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to a request to waive the Oxide of Nitrogen requirements for transportation conformity in the Milwaukee and Manitowoc ozone nonattainment areas.

[FR Doc. 98–2616 Filed 2–2–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–283; RM–7807, RM–8772]

Radio Broadcasting Services; George West, and Corpus Christi, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of G & W Radio, allots Channel 228C3 to George West, Texas, as the community's second local FM service. *See* 56 FR 50843, October 9, 1991. The Commission also denies a counterproposal (RM–8772) filed by Reina Broadcasting, Inc. requesting the substitution of Channel 234C2 for Channel 234C3 at Corpus Christi, Texas, since Reina failed to provide the express agreement of Four M.L. Broadcasting (applicant for Channel 281A at George West) to upgrade and open a new filing window for Channel 281C3 at George West. Channel 228C3 can be allotted to George West in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.0 kilometers (7.5 miles) southwest to avoid a short-spacing to vacant Channel 281A, George West, Texas. The coordinates for Channel 228C3 are 28–15–46 and 98–12–24. Mexican concurrence for this allotment has been received since George West is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

With this action, this proceeding is terminated.

EFFECTIVE DATE: March 2, 1998. The filing for Channel 228C3 at George West, Texas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–283, adopted January 7, 1998, and released January 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

Part 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334,336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 228C3 at George West.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–1892 Filed 2–2–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket PS–118A; Amendment 192–82]

RIN 2137–AC55

Excess Flow Valve—Customer Notification

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

ACTION: Final rule.

SUMMARY: This final rule requires operators of natural gas distribution systems to provide certain customers with information about excess flow valves (EFV's). Specifically, customers of new and replaced single residence service lines must be provided written notification about the availability of these valves meeting DOT-prescribed performance standards, and related safety benefits and costs. If a customer requests installation, the rule requires an operator to install the EFV if the customer pays all costs associated with installation. EFVs restrict the flow of gas by closing automatically if a service line breaks, thus, mitigating the consequences of service line failures. This regulation would enhance public awareness of the potential safety benefits from installing an EFV.

DATES: This final rule takes effect February 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mike M. Israni, telephone (202) 366–4571, or e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this final rule, or the Dockets Unit (202) 366–4453 for copies of this final rule or other material in the docket referenced in this rule.

SUPPLEMENTARY INFORMATION:

Background

During routine excavation activities, excavators often sever gas service lines causing loss of life, injury, or property damage by fire or explosion. EFVs restrict the flow of gas by closing automatically if a service line breaks, and mitigate the consequences of service line failures. Despite efforts, such as damage prevention programs, to reduce the frequency of excavation-related service line incidents on natural gas service lines, such incidents persist and result in death, injury, fire, or explosion. Because damage prevention measures are not foolproof, RSPA has sought an appropriate means to mitigate the consequences of these incidents. The National Transportation Safety Board (NTSB) and others have recommended EFVs to mitigate the consequences of such incidents, thus, saving lives and lessening the extent of property damage.

By having an operator inform its customers of the availability of EFVs for installation at a cost and the resultant safety benefits, customers can decide if they want the operator to install an EFV on the service line. Notification giving information on EFVs may encourage EFV use and, by encouraging such use, may lead to reduced fatalities, injuries, and property damage that can result from excavation-related incidents on gas service lines.

Statutory Requirement

In 49 U.S.C. 60110 Congress directed the Department of Transportation (DOT) to issue regulations requiring operators to notify customers in writing about EFV availability, the safety benefits derived from installation, and costs associated with installation, maintenance, and replacement. The regulations were to provide that, except where installation is already required, if the customer requests installation, an operator must install an EFV that meets

prescribed performance criteria, if the customer pays all costs associated with installation.

Before DOT prescribed notification regulations, the statute required DOT to issue regulations prescribing the circumstances where operators of natural gas distribution systems must install EFVs, unless DOT determined that there were no circumstances under which EFVs should be installed.

RSPA is the administration within DOT responsible for implementing laws addressing pipeline safety.

RSPA published a notice of proposed rulemaking (NPRM) (Notice 2; 58 FR 21524; April 21, 1993) (''Excess Flow Valve Installation on Service Lines''), proposing to require that EFVs be installed on single-residence gas service lines. During the rulemaking process we reviewed technical information, sought advice from state safety representatives, and analyzed available operational data. RSPA determined, primarily for cost reasons, that there were no circumstances where RSPA should require EFV installation. As required by the statute, RSPA reported this determination to Congress on April 4, 1995. A copy of this report is available in the docket. As further required by 49 U.S.C. § 60110, we developed performance standards for EFVs (industry standards were not then available) to ensure that an EFV installed in a single-residence gas service line operates reliably and safely. These performance standards were published as a final rule [61 FR 31449; June 20, 1996].

AGA Petition and Pre-NPRM Meetings

The American Gas Association (AGA) submitted a petition for a rulemaking on EFV customer notification in which it identified several issues it believed we should discuss in a notification rule. RSPA considered AGA's petition (on file in the docket) in developing the notice of proposed rulemaking. To gain further information before developing a proposed notification rule, RSPA met with representatives of AGA, the American Public Gas Association (APGA), NTSB and the Gas Safety Action Council (GASAC) on August 2 and September 6, 1995. We discussed AGA's petition and these meetings in the NPRM.

NPRM

RSPA published an NPRM (61 FR 33476; June 27, 1996), proposing requirements for excess flow valve customer notification. The comment period closed August 26, 1996. Commenters included industry associations, local distribution companies, consultants, city and state agencies, and a federal safety agency.

Advisory Committee Review

In November 1996, RSPA briefed the Technical Pipeline Safety Committee (TPSSC) on the status and the comments received on this rulemaking. In December 1996, we sent letter ballots to the TPSSC members to vote on the proposed rule and the regulatory evaluation. (The TPSSC is required to serve as a peer review panel and review the costs and benefits associated with any proposed regulatory standard in accordance with 49 USC 60102 (b)(3)). We received 11 out of 15 ballots. These 11 members voted to adopt the NPRM and Regulatory Evaluation. Seven members had comments, which are addressed below.

The Final Rule

The final rule establishes a new section in the pipeline safety regulations, § 192.383, ''Excess flow valve Customer Notification.'' The rule requires written notification of customers with natural gas service lines where EFVs meeting prescribed performance criteria can be installed. To be consistent with the final rule that prescribed performance standards for EFVs installed on single-residence service lines operating continuously throughout the year at a pressure not less than 10 psig, this rule limits the scope of customer notification to those customers. Of those single-residence services, the rule further limits written notification to new and replaced service line customers.

Definitions

RSPA defines a replaced service line as a natural gas service line where the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

RSPA defines the service line customer an operator must notify as the person who pays the gas bill, or where service has not yet been established, the person requesting service. Under this definition, the person who pays the gas bill may be the tenant, the owner, or a third party. In cases where service has not yet been established, such as a new subdivision or cluster of homes, the person requesting new service may be the home builder.

What to Put in the Written Notice

This rule requires that the notification contain the minimum amount of information the statute requires. An operator may decide how to word that information as long as sufficient information is given to provide the customer a basis to decide whether to pay for EFV installation. The notice must gear the explanations to the gas consumer, not an engineer.

—Meets DOT Performance Standards

An explanation that an excess flow valve meeting minimum DOT-prescribed performance standards is available for the operator to install on the service line if the customer pays the cost of installation. The explanation must make clear to the customer that EFV installation is not mandatory, but that if the customer requests installation and pays all costs associated with installation, the operator will install an EFV.

—Safety Benefits

An explanation of the potential safety benefits of installing an EFV, to include that an EFV is designed to shut off the flow of natural gas automatically if the service line breaks.

—Cost Associated With Installation, Maintenance, and Replacement

An explanation that if the customer requests the operator to install an EFV, the customer bears all costs associated with installation, and what those costs are. In addition, the notice must alert the customer that costs for maintaining and replacing the EFV may be incurred, and what those costs would be, to the extent known.

Additional Information in the Written Notice

The final rule does not require an operator include additional information, such as EFV manufacturers' brochures and a consumer group's telephone number, in the notification. Although we are not requiring such information to be included, we encourage operators to include any information that aids a customer's decision making.

When Notification and Installation Must be Made

The final rule requires that one year after the final rule is published, an operator must notify each service line customer of a new service line (single-residence service line that operates at a pressure not less than 10 psig) when the customer applies for service. On replaced service lines, an operator must notify each customer (single-residence service line operating at a pressure not less than 10 psig) when the operator determines the service line will be replaced. If a customer requests installation, the operator must install the EFV at a mutually agreeable date.

What Records Are Required

The final rule requires that an operator must make certain records available for inspection:

(1) A copy of the notice currently in use; and

(2) Evidence that notices have been sent to the service line customers (new and replaced single-residence service lines operating at a pressure not less than 10 psig) within the previous 3 years.

When Notification is Not Required

In the NPRM, we sought comment from operators, state pipeline safety agencies, their representative associations and others on the issue of a state or locality preventing an operator from charging the customer for EFV installation costs. We also sought comment on whether the waiver process in such a situation would be too burdensome. We did not receive any comment. Thus, in RSPA's judgment the regulatory waiver process now in place may be used if a State or local authority prevents or restricts the gas utility from accepting a customer's payment for EFV installation costs. Similarly, if an operator believes that in a particular situation, compliance would be infeasible, impractical or unreasonable, the operator may apply for a regulatory waiver.

The final rule describes certain limited circumstances where an operator would not have to notify a customer.

- Service lines where the operator will install an excess flow valve voluntarily or where the state or local jurisdiction requires installation.
- If excess flow valves meeting the prescribed performance standards are not available to the operator.
- Where an operator has prior experience with contaminants in the gas stream that could interfere with an EFV's operation, cause loss of service to a residence, or where installing an EFV would interfere with necessary operation or maintenance activities, such as blowing liquids from the line.
- In emergency and short time notice replacement situations where an operator cannot notify a customer before replacing a service line. Examples of these situations would be where an operator has to quickly replace a service line because of

—third party excavation damage

—Grade 1 leaks, as defined in the Appendix G–192–11 of the Gas Piping Technology Committee (GPTC) Guide for Gas Transmission and Distribution Systems,

—a short notice service line relocation request

We have allowed an exemption from notification when an operator must quickly replace a service line because of third party damage. Although the impetus for this notification rule was to mitigate the consequences of service line failures, particularly, when caused by third party excavators, we recognize that in such an emergency, an operator may not be able to notify a customer. Nonetheless, although not required to do so, we urge operators to make their best efforts to notify customers in emergency situations, so that the consequences of any future failures may be mitigated.

Discussion of Comments

RSPA received 49 comments in response to the NPRM. Commenters included two industry associations (AGA, New England Gas Assoc.), 37 local distribution companies, two consultants, seven city and state agencies, and one federal safety agency (NTSB). In addition, we received comments from TPSSC members. Of these comments, 12 were opposed to issuing any notification rule, and the remaining commenters directed their remarks to specific issues.

General Comments—Twelve commenters were opposed to issuing the rule. They questioned the reliability, the benefit versus costs, and the suitability of EFVs to handle the majority of leaks encountered in a gas distribution system. They argued that our focus should be on preventing third-party damage, that incidents involving the type of failures where an EFV is effective are infrequent, and that because most operators design their load systems for future use, EFVs would severely restrict load growth.

Two commenters said the typical customer is not well versed in gas industry technology, safety matters or frequency of service line failures, and may even be confused when asked to make a decision on EFVs. Two commenters suggested that verbal notification may be sufficient.

NTSB pointed out that the statute placed no limits on the type of customer who should receive notification. NTSB recommended we require notice of EFV availability to all residential and commercial customers with service lines that have operating parameters compatible with any commercially available EFV.

Response—RSPA is following its statutory mandate to prescribe regulations requiring operators to notify customers in writing about EFV availability, the safety benefits derived from installation, and costs associated with installation, maintenance and replacement, and requiring operators to install an EFV at the customer's request if the customer pays the installation costs. We considered all comments in developing final regulations.

If notification contains this minimum amount of information, and is written for an average gas customer, the customer should be able to decide whether it wants an EFV installed. If a customer has questions, an operator should be able to provide knowledgeable personnel who can explain technical information to a customer's satisfaction to enable the customer to make a well-reasoned decision about installation.

RSPA determined that it would neither be practical nor cost beneficial for operators to notify all single-residence customers. Determining whether EFVs can be installed on existing lines presents difficulties (such as lack of relevant records and historical data) not encountered on new and replaced lines. Furthermore, RSPA's economic evaluation shows that requiring notification to all single-residence customers would result in substantially higher costs with marginal safety benefits due to the increased time an operator would have to spend in responding to customer inquiries and determining operating conditions on existing lines. Because of the increased installation costs to retrofit an existing line, it would be unlikely that many existing customers would choose to pay the costs of installation. Nonetheless, RSPA encourages operators to consider expanding notification to all single-residence customers.

RSPA will consider extending the scope of notification to hospitals, schools, commercial enterprises, and apartment buildings after EFV standards and guidelines are published by the American Society of Testing and Materials (ASTM) F17.40 committee and the American National Standards Institute (ANSI)/Gas Piping Technology Committee (GPTC) Z380.

Comments on Cost/Benefit Study—Five commenters said that we had underestimated the costs to comply with the rule. They explained that the cost of developing a utility-specific notice will be significant because of the legal, safety, and customer issues involved, and that we should consider $35 to $45 per hour as the cost to develop and review the notice. Commenters said many calls would need an engineer or a supervisor to talk to the customer. AGA said the study had failed to address who would incur the costs if the customer wants the EFV removed, or if a properly installed EFV later malfunctions and cuts off service.

Advisory Group: One member pointed out that postage costs were not included in the total cost to notify all existing residential customers. This member suggested including the estimated number of customers who would request an EFV in each case, and a cost comparison of excavation costs for new and existing customers.

Response—RSPA has revised its final economic evaluation in light of the comments to include the labor costs of preparing and mailing the notice, and the costs of fringe benefits in the hourly costs. In addition, we revised the salary estimates of the person responding to customer inquiries to accommodate concerns that answering such inquiries may require technical expertise.

RSPA did not include postage costs in its estimate of the cost to notify existing customers because the notification could be included with the customer's monthly bill. We also did not estimate the number of customers who might request an EFV because we have no relevant data. The cost/benefit study did explain in comparing the costs to notify new and replaced customers versus existing customers that existing customers requesting EFV installation might have to pay $500 or more for installation mostly due to excavation cost. The cost/benefit study is described later in this document and is available in the docket.

Proposed Section 192.383(a)—(68.9 kPa (10 psig) Threshold)—Six commenters said that a 68.9 kPa (10 psig) threshold for installing an EFV should not be used as a notification threshold. NTSB said that EFVs should be made available to customers having service lines that operate at pressures as low as 34.5 kPa (5 psig). The other commenters did not want the 68.9 kPa (10 psig) threshold because if the service line pressure for each customer is not recorded, it would be difficult to know if the line pressure will drop below 68.9 kPa (10 psig). Some commenters suggested that a minimum pressure threshold should be left to the operator's judgment.

Response—We proposed that an operator notify a customer of a new or replaced service line that operates at a pressure not less than 68.9 kPa (10 psig) because this is the pressure threshold we had established for EFV installation in the performance standards. We explained our reasons for setting this threshold in that final rule [61 FR 31449; June 20, 1996].

The final rule continues to limit notification to new and replaced service lines meeting the 10 psig threshold. In making this decision, we also considered that:

—Most households in the United States receive natural gas from their service lines between 68.9 kPa (10 psig) to 413.4 kPa (60 psig).

—DOT's incident report data indicates that services in the 34.5 kPa (5 psig) to 68.9 kPa (10 psig) pressure range are unlikely to experience incidents from outside force damage. (A survey of incidents from 1984 to 1992 shows that one out of 212 reportable incidents occurred due to outside force damage).

Comments on Section 192.383(a)—(Service Lines Covered Under This Rule)—One commenter asked if customer-owned service lines were covered. Another commenter said that the proposed rule was unclear whether notification should be sent to two customers if both are supplied from the same service line.

Response—This rule applies to service lines serving a single residence. One service line serving two or more residents would not be covered. Customer-owned service lines operating at or above the 10 psig pressure requirement are included unless one of the notification exemptions applies.

Proposed Sections 192.383(a)(1), (a)(3) and (b)—(Costs Associated With EFV Installation)—We proposed that if a customer requested EFV installation, the customer pay the costs associated with installation and defined those costs as the direct costs (parts and labor) of installation. We also proposed that an operator must install an EFV if the customer agrees to pay all installation costs.

AGA said that Congress clearly intended for the customer to incur *all* costs including operation and maintenance. Several commenters stated that we must follow Congress's intent to require customers pay for operating and maintaining the EFV, in addition to the installation costs. Some commenters said that costs must include all incremental parts, labor and maintenance. They said costs such as repair, resetting, replacement, and deactivation can be substantial. Three commenters argued that we have no authority to mandate a costing methodology because that authority lies with the state public utility or commission. Some commenters complained that direct costs had not been clearly defined.

NTSB commented that the language in the proposed rule requiring customers to pay replacement costs is inconsistent with the preamble's discussion that operators recoup only the direct costs of installation. NTSB also pointed out that the experience of the two largest users of EFVs, who had not had any design-related EFV failure in the last 20 years, supported not including replacement costs.

Advisory Group: Two members said costs should include indirect costs of installing or replacing the EFV, including maintenance and replacement costs. One member said costs incurred due to false closure or other inappropriate operation should be included.

Response—The statute requires that an operator notify its customers of the costs associated with installation, maintenance and replacement but that the operator install an EFV if the customer pays the installation costs. In following this mandate, we are requiring that an operator notify its customers that costs for maintaining and replacing an EFV could be incurred after installation and what those costs are, to the extent known. The notice must also explain that if the customer requests installation, the customer has to pay the installation costs at that time, and what those costs are.

RSPA recognizes that the regulatory authority to price gas lies with state and local public utility commissions. We believe that public utility commissions will recognize that EFV installation, maintenance and replacement costs are legitimate costs and allow operators to charge for those services, to the same extent they are allowed to charge for other service line services. Nonetheless, we believe that to carry out the statutory requirements, we should define some of the costs.

The proposed rule defined installation costs as direct costs (parts and labor) of installing an EFV. We proposed a limit on what an operator could recoup for installing an EFV so that an EFV would not be cost prohibitive. We believe Congress intended gas customers to have a reasonably priced extra safety protection. In finalizing this rule we have attempted to clarify the installation costs that an operator should recoup. Installation costs of an EFV are costs directly connected with installation of EFVs, for example, costs of parts, labor, inventory and procurement.

Although the statute was amended to allow an operator to notify its customers about installation, maintenance and replacement costs, a customer only has to pay installation costs to have an EFV installed on its service line. Thus, we believe that an operator may later recoup maintenance and replacement costs only if such costs are ever incurred. These costs are not to be included in the initial installation costs.

Proposed section 192.383(a)(2)—(Potential Safety Benefits)—The NPRM proposed that notification include an explanation of potential safety benefits. Eight commenters said that the NPRM did not address the potential hazards from EFVs, which could subject an operator to liability if the EFV fails to perform to a customer's satisfaction. One commenter suggested notification include that an EFV is not designed to protect against slow leaks, system over pressure, or leaks inside the house.

We further proposed that the explanation of safety benefits include that an EFV is designed to shut off the flow of the natural gas when the service line is ruptured. A commenter suggested changing the wording to ''in the event'' the service line is severed, because ''when the service line is ruptured'' implies that a service line will rupture. This commenter also suggested that the term ''rupture'' be replaced with ''severed'', as ''rupture'' is also used for material failures, such as a crack in polyethylene pipe.

Advisory Group—One member suggested replacing ''service line is ruptured'' with ''damaged service line conditions cause its closure.'' Another member said the wording ''designed to shut off the flow'' is not accurate as an EFV may not totally shut off flow.

Response—The statute requires notification to include EFV benefits. The statute does not preclude an operator from putting in EFV limitations (for example, that an EFV does not protect against slow leaks due to corrosion, threaded joints, or leaks beyond the meter assembly).

We have changed ''rupture'' to ''break'', and ''when'' to ''if the service line breaks'' in the final rule. However, we have retained the phrase ''designed to shut off'' because it is a performance standard requirement for the valve.

Proposed Section 192.383(a)(4)—(Notification Language)—The NPRM proposed that notification be ''in sufficient detail'' and ''in language easily comprehensible.'' Two commenters said this is a subjective standard that does not enable the operator to distinguish between acceptable and deficient language.

Response—We have revised this requirement. We continue to use performance-based language to ensure that notices are written for the average customer, not for persons with specialized technical expertise.

Comments on Additional Information That Should be in the Notice—One commenter said notification should include information that excessive consumption may cause the EFV to activate. This commenter said the operator should not give the customer any warranties about an EFV's operation. One commenter said that gas operators should, in addition to third party damage, describe all conditions, such as, earthquakes, lightning strikes, ground subsidence caused by changing weather conditions, and vandalism, which may cause a pipeline to rupture.

Response—RSPA disagrees that excessive consumption may cause an EFV to activate. If the valve meets the DOT performance standards and is chosen properly based on the service line consumption, then the valve will not activate unless consumption exceeds 50% above the maximum flow, an unlikely event. We have used the phrase ''if the service line breaks'' to acknowledge that other conditions may cause a service line failure. However, we leave to the operator's discretion whether to describe all conditions that may cause a pipeline to fail.

Proposed Section 192.383(a)(5)—(Comments on Definitions of Replaced Service Line & Service Line Customer)—Twenty six commenters requested further clarification of the proposed ''replaced'' service line and ''service line customer'' definitions.

Replaced Service Line—We proposed a ''replaced'' service line as one in which a section of pipe is replaced between the gas main and meter set assembly. Two commenters suggested a ''replaced'' service line should be as where a fitting connecting the service line to the main is replaced or when the service is replaced completely from the main to the meter assembly. One commenter suggested a ''replaced'' line as one where at least 50% of the service line is being replaced. AGA recommended that a ''replaced'' service line refer to a natural gas service line in which the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

Advisory Group—Two members recommended we use AGA's definition of ''replaced'' service line.

Service Line Customer—We proposed that a ''service line customer'', the person the operator should notify, should be the person paying the gas bill or where the service was not yet established, the owner of the property. AGA suggested that where service has not yet been established, the service line customer should be the person requesting service. Two commenters suggested the person notified should be the person requesting service, or where gas service exists and the residence is vacant, the owner of the property. One commenter said the person notified should be the builder, not the owner of the property who signs for new service.

NTSB said the proposed definition does not allow persons at risk, specifically renters in new housing subdivisions, to decide whether an EFV should be installed. NTSB said that because our definition limited operators to notifying builders in new housing subdivisions, we should require notification of both renters and the owners of the rented buildings.

Some commenters said the proposed wording could be misread to suggest all customers must be notified. Commenters suggested using ''each applicable customer'' and define ''applicable customer'' as those customers meeting the criteria in 192.383 (a). AGA and other commenters suggested adding another definition to clarify which customers should be notified.

Response—We have revised the ''replaced'' service line and ''service line customer'' definitions. We have also re-written the regulation for clarity, to eliminate any confusion over which gas customers must be notified. NTSB's comment that both renters and owners be notified would create conflict if one wanted an EFV installed and the other did not. Proposed section 192.383(a)(5) is changed to section 192.383(b) in the final rule.

Proposed Section 192.383(c)—(30 Day Notification and One Year Implementation Requirements)—Practically all commenters expressed concern about the proposed requirement that an operator notify each customer thirty days before a new or replaced service line is installed. They said thirty days was impractical and unduly burdensome. Commenters explained that operators currently schedule and complete regularly planned service line installations in less than 30 days. Moreover, operators replace service lines immediately for public safety and good customer service. Some commenters suggested allowing an operator to establish its own criteria for when to notify. One commenter said that we did not clearly state how many times the service line customer should be notified.

NTSB said the one-year implementation period is too long, and that six months is more than adequate for the industry to prepare for compliance. NTSB explained that EFVs are commercially available and that industry associations are already developing guidance to help operators draft appropriate notices.

Advisory Group—Two members recommended a 5 to 10 day notification

period as more appropriate than the proposed 30 days.

Response—RSPA agrees that 30 days advance notification is impractical and has revised this requirement. Now an operator must notify a new service line customer (single residence with service line pressure not less than 10 psig) of EFV availability when that customer applies for service. A customer having its service line replaced (single residence with service line pressure not less than 10 psig) must be notified of EFV availability when the operator determines the service line will be replaced. If the customer requests installation, an operator must install the EFV at a mutually agreeable date. In either case, a customer has to be notified only once.

We have kept the one-year implementation period. We disagree that a six-month implementation period is adequate for operators to notify customers. One year is more appropriate for operators to learn which customers to notify, to draft notices, and to instruct personnel to handle inquiries.

Proposed Section 192.383(d)–(Recordkeeping)—Six commenters objected to the proposal that operators keep proof that notices have been sent to customers within the previous 3 years. They said that maintaining a list of notified persons will be burdensome and cumbersome, driving up the record keeping cost. Some commenters suggested changing ''proof'' to ''evidence.''

Advisory Group—One member argued against any record keeping requirement because of the difficulty in tracking who was notified.

Response—To check compliance, RSPA and State inspectors will need to view a copy of the notice operators send customers and evidence that notices have been sent to customers. This evidence may relate to the overall notification process, and need not be customer-specific. For example, a record showing the approximate dates notices are mailed or a written procedure for the notification process would be evidence notices have been sent. Therefore, we have not changed the proposed record keeping requirement.

Proposed Section 192.383(e)—(Exemptions from Notification Requirements)—In the NPRM, we sought comment and information on situations where an operator may not be able to notify a customer before replacing a service line. Seventeen commenters responded to this issue. Several commenters said that many repairs made to services to repair minor damage or eliminate leaks involve replacing a short section of line and not exposing the main, and should be exempt from the notification rule. The majority emphasized that notification requirements should not apply to emergency and short notice replacements, such as when a line has to be replaced because of:

—third party excavation damage

—Grade 1 leaks, as defined in the Appendix G–192–11 of the Gas Piping Technology Committee guide for gas transmission and distribution systems (A leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous.)

—a short notice service line relocation request (a short notice request from the customer or a utility to relocate the service line due to, for example, a main being relocated, to prevent interference with new construction, the widening of a street.)

In addition, AGA and three other commenters urged us to exempt a service line where the regulator/meter assembly is within 3.66m (12 feet) of the main. They reasoned that because third party damage on shorter service lines is uncommon, an EFV will not serve any purpose.

One operator said it would not be prudent to put an EFV in any part of the system if contaminants have shown up in other areas of the system. Another commenter said an operator should not have to send notification if it found EFV installation impractical.

Advisory Group—Two members recommended adopting an emergency and short notice exemption. One member recommended exempting notification for service lines less than 3.66m (12ft), because third party damage is unlikely on short lines. One member suggested exempting installation in ''impractical or infeasible'' circumstances. Another member said it was unclear whether a waiver was required for a specified exemption.

Response—We have amended the notification exemptions to accommodate certain emergency and short notice situations. As explained previously, although we are not requiring notification in those situations, we encourage operators to make their best efforts to notify customers. The consequences of any future service line failures may be mitigated if an EFV is installed. We have not adopted a short line exemption. We believe that because an operator is unlikely to have advance knowledge of a service line's length, creating an exemption for short lines would serve little purpose. While we recognize that on short service lines an EFV may offer little or no protection, because third party damage is unlikely, we believe the customer should decide whether it wants an EFV installed. An operator may decide whether to include information about short line protection.

Although we allow an exemption when an operator has experienced contaminants in the gas stream, we disagree that EFVs should not be installed throughout the entire distribution system if contaminants have shown up in other areas of the system. These are probably isolated instances, unless the operator can demonstrate otherwise.

RSPA believes the listed exemptions should cover most situations. If in a particular instance, an operator believes it should not notify customers because EFV installation would be infeasible, impractical, or unreasonable, the operator may apply for a regulatory waiver.

Comments on Rearranging Sections—Three commenters recommended we rearrange sections for clarity.

Response—RSPA has rewritten and rearranged the final rule for clarity.

Regulatory Analyses and Notices

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. The final rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

A regulatory evaluation has been prepared based on the estimated expense involved in developing and sending customer notification to new and replaced single-residence service line customers.

RSPA has determined that large and moderate-sized gas operators will develop their own customer notice. This should take approximately 40 hours at approximately $40 an hour or a one-time cost of $1,600 per company (40 hours × $40 per hour = $1,600). RSPA estimates in its regulatory evaluation (based on analysis done for an earlier rulemaking on customer-owned service lines) that there are 106 large gas operators and 145 moderate-sized gas operators. Therefore, the cost to the industry to develop the required notice will be a one-time cost of $401,600 (251 × $1,600).

The cost of mailing this notice will be $0.32 plus the estimated $0.1 copying

cost for a one-page notice, for a total cost of $0.42 per customer. If there are 900,000 new or replaced customers annually, the cost of postage for this notice is $378,000 (900,000 × .42 mailing) per year. In our draft economic evaluation, we did not account for the labor cost it takes to mail the notice. One operator suggested 5 minutes per notice by an employee making $11 per hour with an additional 60% for fringe benefits, which calculates to $1,320,000 (900,000 × $11 × 1.6 × 1½ = $1,320,000). The total cost of postage plus labor would be $1,698,000 annually ($378,000 + $1,320,000 = $1,698,000).

Assuming 10% of all notified customers were to call operators for more information would result in 90,000 phone calls. Each call lasting on average five minutes would amount to 7,500 hours (90,000 × 5/60 hrs) spent answering customer inquiries. In the draft evaluation, we estimated the hourly wage for the person answering telephone inquiries would be $15 an hour. One commenter suggested that the person answering telephone inquiries should be an engineer. To reflect that a person with more technical expertise may need to answer a customer's inquiry, we increased the hourly salary estimate to $25 per hour plus benefits. If the employee responsible for answering were paid $25 per hour plus 60% for fringe benefits, the additional cost of these conversations would be $300,000 (75,000 × $25 × 1.6) per year. The total cost to the industry will be the one time cost of developing the notice, $401,600, and the additional cost per year of mailing and handling inquiries, $1,998,000 ($300,000 + $1,698,000 = $1,998,000).

As discussed in the Regulatory Evaluation, the American Public Gas Association (APGA), which represents municipal gas distribution companies (the bulk of small operators), has agreed to assist small and medium-sized operators in developing a generic EFV notification. RSPA also believes that EFV manufacturers, as well as other large companies and state gas associations, are likely to assist smaller gas operators in developing an EFV notice. RSPA believes that, with this help, small and medium-sized operators will choose to use a generic notification rather than incur the cost of developing their own notice. However, even with the cost of notice reproduction, mailing, and handling phone inquiries as described above, we estimate that the cost of developing the required notice will be minimal for small and medium-sized operators.

We considered requiring notification of the availability of EFVs to all customers, not simply new and replaced customers. We rejected this alternative as not being cost-beneficial for two reasons. First, the cost of this rule would be an additional $5.36 million (53.6 million customers × $.10 per copy) just for copying the notice. In addition, assuming 10% of all notified customers were to telephone operators for more information, that would result in 5.36 million additional phone calls. Each call lasting five minutes would amount to 446,666 hours (5.36 million × 5/60 hours). If the employees responsible for answering these inquiries were paid a salary of $25 per hour plus 60% for fringe benefits, the additional cost of handling inquiries would be $17.97 million (5.36M × 1/12 × 1.6 × $25=$17.97M) to the industry. Therefore, the total cost of notifying existing customers would be additional $23.33 million ($5.36M + $17.97M). Second, there would be marginal safety benefit as few existing service line customers would be likely to request EFV installation that could cost more than $500 per service line, mainly due to the excavation costs associated with such installation. Therefore, RSPA concludes that requiring operators to notify all existing customers would cost significantly more and would provide little additional benefit to the public.

Benefits

The main benefit of this regulation is that new and replaced service line customers will be provided with the necessary information for them to decide whether they should request that an EFV be installed on their service line. Other expected benefits from this rule are increased EFV use, which could reduce the fatalities, injuries and property damage that can result from excavation-related incidents on gas service lines.

Although the total benefits of this rule cannot be estimated, RSPA has analyzed incidents (March 1991–February 1994) involving 2 fatalities and 16 injuries which may have been prevented with the installation of an EFV. Further, the average property damage from 30 reportable incidents (March 1991–February 1994) involving service lines where EFV may have mitigated the accident was estimated to be $14,082 per incident (1993 dollars). Updating this for November 1997 dollars the average property damage per incident is estimated to be $15,739 per incident.

Conclusion

Based on the findings of this evaluation this rule should have minimal economic impact on industry and the public. The regulatory evaluation is available for review in the docket.

Regulatory Flexibility Act

The Federal Government is required to determine the impact of its regulations on small entities. Based on the regulatory evaluation, RSPA has determined that the rule will not have a significant impact on a substantial number of small entities. Approximately 1,600 natural gas distribution operators will be affected by this rule. APGA, the trade association of the majority of small operators, has indicated it will assist operators in preparing a notification. Additionally, EFV manufacturers have also offered to assist operators. It is also likely that regional gas associations and large operators will assist smaller operators in developing the appropriate notification. All these actions will serve to minimize the costs to small operators because small operators are apt to use a generic notice created by one of these groups rather than incur the expenses of developing their own notice.

Paperwork Reduction Act

This final rule contains information collections that have been submitted for review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). RSPA has made some adjustments to its hourly and cost paperwork burden estimates based on comments it received to its draft economic evaluation. If any commenters have additional concerns that have not previously been submitted, they may submit their comments directly to OMB.

Interested persons are invited to comment on the collection of information. *Comments should address:*

(1) The necessity and utility of the information collection for the proper performance of the agency's functions; (2) the accuracy of the agency's burden estimates, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the information collection burden on the respondents, including the use of automated, electronic, mechanical, or other technological collection techniques.

Administration: Department of Transportation, Research and Special Programs Administration;

Title: Excess Flow Valves: Customer Notification

Need for Information: By notifying customers that they may have an excess flow valve installed on their line at cost, some of the consequences of service line

failures (fatalities, injuries and property damage) could be mitigated.

Summary: Operators must demonstrate that they have sent the EFV notification to their customers.

Proposed Use of Information: The notification will advise customers that they may request an excess flow valve be installed on their service line at their own expense. Also, by keeping proof that notification was sent, RSPA will be able to ascertain that operators are complying with this regulation.

Frequency: Occasionally, once for each new and renewed customer.

Number of Respondents: 1,590.

Estimate of Burden: 92,540 hours.

Respondents: Natural Gas Distribution Operators.

Estimated Total Annual Burden on Respondents: 58.2 hours (first year) 51.9 hours each subsequent year.

Comments on the information collection requirements should be submitted within 30 days of the publication of this notice to: the Office of Management and Budget, Office of Information and Regulatory affairs, New Executive Office Building, 725 17th St., NW Washington, D.C. 20503, Att.: Desk Officer RSPA. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

This rule will not have substantial effects on states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

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

List of Subjects in 49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR Part 192 as follows:

PART 192—[AMENDED]

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

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

2. Part 192 is amended by adding § 192.383 to read as follows:

§ 192.383 Excess flow valve customer notification.

(a) *Definitions.* As used in this section:

Costs associated with installation means the costs directly connected with installing an excess flow valve, for example, costs of parts, labor, inventory and procurement. It does not include maintenance and replacement costs until such costs are incurred.

Replaced service line means a natural gas service line where the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

Service line customer means the person who pays the gas bill, or where service has not yet been established, the person requesting service.

(b) *Which customers must receive notification.* Notification is required on each newly installed service line or replaced service line that operates continuously throughout the year at a pressure not less than 68.9 m (10 psig) and that serves a single residence. On these lines an operator of a natural gas distribution system must notify the service line customer once in writing.

(c) *What to put in the written notice.* (1) An explanation for the customer that an excess flow valve meeting the performance standards prescribed under § 192.381 is available for the operator to install if the customer bears the costs associated with installation;

(2) An explanation for the customer of the potential safety benefits that may be derived from installing an excess flow valve. The explanation must include that an excess flow valve is designed to shut off the flow of natural gas automatically if the service line breaks;

(3) A description of installation, maintenance, and replacement costs. The notice must explain that if the customer requests the operator to install an EFV, the customer bears all costs associated with installation, and what those costs are. The notice must alert the customer that costs for maintaining and replacing an EFV may later be incurred, and what those costs will be, to the extent known.

(d) *When notification and installation must be made.*

(1) After February 3, 1999 an operator must notify each service line customer set forth in paragraph (b) of this section:

(i) On new service lines when the customer applies for service.

(ii) On replaced service lines when the operator determines the service line will be replaced.

(2) If a service line customer requests installation an operator must install the EFV at a mutually agreeable date.

(e) *What records are required.*

(1) An operator must make the following records available for inspection by the Administrator or a State agency participating under 49 U.S.C. 60105 or 60106:

(i) A copy of the notice currently in use; and

(ii) Evidence that notice has been sent to the service line customers set forth in paragraph (b) of this section, within the previous three years.

(2) [Reserved]

(f) *When notification is not required.*

The notification requirements do not apply if the operator can demonstrate—

(1) That the operator will voluntarily install an excess flow valve or that the state or local jurisdiction requires installation;

(2) That excess flow valves meeting the performance standards in § 192.381 are not available to the operator;

(3) That an operator has prior experience with contaminants in the gas stream that could interfere with the operation of an excess flow valve, cause loss of service to a residence, or interfere with necessary operation or maintenance activities, such as blowing liquids from the line.

(4) That an emergency or short time notice replacement situation made it impractical for the operator to notify a service line customer before replacing a service line. Examples of these situations would be where an operator has to replace a service line quickly because of—

(i) Third party excavation damage;

(ii) Grade 1 leaks as defined in the Appendix G–192–11 of the Gas Piping Technology Committee guide for gas transmission and distribution systems;

(iii) A short notice service line relocation request.

Issued in Washington, D.C. on January 27, 1998.

Kelley S. Coyner,

Acting Administrator.

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