

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 191, 192, and 195

[Docket Number RSPA-99-6132]

RIN 2137-AD42

Pipeline Safety: Producer-Operated Outer Continental Shelf Natural Gas and Hazardous Liquid Pipelines That Cross Directly Into State Waters

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to implement a provision of the December 10, 1996, Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and the Department of Transportation (DOT) regarding safety regulations of Outer Continental Shelf (OCS) natural gas and hazardous liquid pipelines. This rule addresses producer-operated natural gas and hazardous liquid pipelines that cross into State waters without first connecting to a transporting operator's facility on the OCS. This proposed rule would also address the procedures by which producer operators could petition for approval to operate under RSPA regulations governing pipeline design, construction, operation, and maintenance.

DATES: Comments on the subject of this proposed rule must be received on or before June 4, 2002.

ADDRESSES: Comments should identify the docket number of this proposed rule, RSPA-99-6132, and be mailed to the Dockets Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Plaza 401, Washington, DC 20590-0001. You should submit the original and one copy. Anyone who wants confirmation of receipt of their comments must include a stamped, self-addressed postcard. The Dockets facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. Alternatively, you may submit written comments to the docket electronically. To do so, log on to the Internet Web address <http://dms.dot.gov> and click on "Help" for instructions on electronic filing of comments. All written comments should identify the docket and notice

numbers which appear in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: You may contact L.E. Herrick by telephone at (202) 366-5523, by fax at (202) 366-4566, by mail at U.S. Department of Transportation, RSPA, DPS-10, room 7128, 400 Seventh Street, SW., Washington, DC 20590, or via e-mail to le.herrick@rspa.dot.gov regarding the subject matter of this notice. For copies of this notice or other material that is referenced herein you may contact the Dockets Facility by telephone at (202) 366-5046 or at the addresses listed above.

SUPPLEMENTARY INFORMATION: This rule is complementary to the RSPA Direct Final Rule (DFR) that addressed OCS natural gas or hazardous liquid pipeline facilities located upstream of the points at which operating responsibility for the pipeline facility transfers from a producing operator to a transporting operator (November 19, 1997; 62 FR 61692 and March 16, 1998; 63 FR 12659) and to the DOI Minerals Management Service (MMS) rule, "Producer Operated Pipelines that Cross Directly into State Waters," which was published in the **Federal Register** on July 27, 2000 (65 FR 46092).

Background

In May 1996, MMS and RSPA met with a joint industry workgroup, which was led by the American Petroleum Institute. The workgroup proposed that the agencies rely upon individual operators of natural gas and hazardous liquid production and transportation pipeline facilities to identify the boundaries of their respective facilities. The MMS and RSPA agreed with the industry proposal and entered into an interagency Memorandum of Understanding (MOU) on December 10, 1996. The MOU was published in a joint MMS-RSPA **Federal Register** Notice (February 14, 1997; 62 FR 7037-7039).

The MOU placed, to the greatest practical extent, OCS production pipelines under DOI responsibility and OCS transportation pipelines under DOT responsibility. Therefore, RSPA has primary regulatory responsibility for transporter-operated pipelines and associated pumping or compressor facilities on the OCS, while MMS has primary regulatory responsibility for producer-operated facilities and pipelines. Producing operators are companies which are engaged in the extraction and processing of hydrocarbons on the OCS. Transporting operators are companies which are engaged in the transportation of those hydrocarbons from the OCS. There are approximately 150 operators of

producer pipelines and 75 operators of transportation pipelines on the OCS.

The MOU established a regulatory boundary on the OCS at the point where operating responsibility for the pipeline transfers from a producing operator to a transporting operator. The MOU did not address the producer-operated pipelines that cross the Federal/State boundary without a transfer on the OCS. However, the MOU provided the agencies with the flexibility to address situations that do not correspond to the general definition of the regulatory boundary.

The purpose of this proposed rule is to address regulatory questions regarding producer-operated pipeline facilities that cross the Federal/State boundary without first connecting to a transporting operator's facility on the OCS and to establish a procedure whereby OCS producing operators may petition to have their pipelines regulated by RSPA. The rule would amend 49 CFR parts 191.1(b)(1), 192.1(b)(1) and 195.1(b)(5).

When we published the DFR to implement the December 1996 MOU on November 19, 1997 (62 FR 61692), we received comments from Chevron U.S.A. Production Company and Chevron Pipe Line Company in which they observed that the proposed regulation did not appear to allow OCS producer-operated pipelines to remain under DOT regulatory authority. The commenters requested that provision be made to allow producers to continue to operate under DOT regulations if approval is obtained from DOI.

This arose because the regulatory boundaries in the MOU and the DFR were described in terms of specific points on OCS pipelines where operating responsibility transfers from a producing operator to a connecting transporting operator. The producer-operated pipelines that cross the Federal/State boundary into State waters without first connecting to a transporter-operated facility were not affected. Nor were the producer lines that flow from State waters to production platforms located on the OCS.

Regardless of the direction of flow, producer pipelines that cross the Federal/State boundary are always subject to RSPA regulation on the portions of the lines located in State waters. However, it does not make operational sense to have a pipeline segment crossing the Federal/State boundary subject to MMS regulations on the OCS side of the boundary and RSPA regulations on the State side of the boundary. We believe that a regulatory

boundary point is better defined in terms of a specific point that isolates one segment of a pipeline from another. By contrast, the Federal/State geographic boundary does not allow the isolation of facilities on each side of the boundary.

Therefore, for producer-operated pipeline facilities that cross into State waters without first connecting to a transporting operator's facility on the OCS, we propose that pipeline segments located upstream (generally seaward) of the last valve on the last production facility (excluding pipeline risers and associated safety equipment) be exempted from compliance with 49 CFR parts 190–199.

Under this arrangement, producer-operated pipeline facilities upstream (generally seaward) of the last valve on the last production facility on the OCS would be regulated under MMS regulations. RSPA would continue to inspect all upstream safety equipment (including valves, over-pressure protection devices, cathodic protection equipment, and pigging devices) that serve to protect the integrity of the RSPA-regulated pipeline segments. This arrangement is consistent with the general intent of the MOU. However, producer-operators whose lines do not transfer operating responsibility on the OCS may petition RSPA for a different regulatory boundary.

An important principle of the industry agreement leading to the MOU is to allow the operators to agree to the regulatory boundaries on their facilities. Therefore, producer pipeline operators may petition RSPA's Office of Pipeline Safety under 49 CFR 190.9 for approval to operate under RSPA regulations governing pipeline design, construction, operation, and maintenance. In considering such petitions, the RSPA Administrator, or designee, will consult with the MMS and the affected parties.

This proposed rule would affect about 215 producer-operated pipelines that are being regulated according to a now-superseded 1976 MOU between DOI and DOT. By exempting the producer-operated pipelines from RSPA regulation, this rule would reduce the overlapping regulations in accordance with the MOU of December 10, 1996. The rulemaking would have minimal economic impact on any of the affected operators.

Regulatory Analyses and Notices

A. E.O. 12866 and DOT Regulatory Policies and Procedures

DOT does not consider this action to be a significant regulatory action under section 3(f) of Executive Order 12866

(58 FR 51735; October 4, 1993).

Therefore, it was not forwarded to the Office of Management and Budget. This proposed rule is not significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of this proposal was prepared and placed in the docket of this action.

Benefits

Without the proposed rule, the pipeline operations of a large number of producers with pipelines crossing directly into State waters could remain subject to overlapping regulations for design, construction, operation, and maintenance. This includes about 35 producers in Gulf of Mexico OCS waters and 10 producers operating in California OCS waters. This would be contrary to the intent of the American Petroleum Institute and industry agreement and the MOU to regulate producer-operated pipelines under DOI and transporter-operated pipelines under DOT.

By implementing the proposed rule, RSPA will bring these pipelines under the provisions of the 1996 MOU. This should serve to minimize confusion among operators concerning which regulations they are expected to follow. We estimate that each OCS producer operator spends on average one-half person year annually per OCS pipeline to comply with RSPA regulations. Assuming that a loaded wage for a person year in the pipeline industry is \$50,000, each company could realize a savings of \$25,000 annually ($\$50,000 \times 0.5 \text{ person-years} = \$25,000$). The annual savings to the entire industry could be as high as \$1,125,000 ($\$25,000 \times 45 \text{ operators} = \$1,125,000$).

Costs

The administrative costs of the proposed rule are minimal. Paperwork costs would arise only in cases when a producer pipeline operator decided to request that its pipeline continue to be regulated as a RSPA facility. We estimate that less than 10 producer pipeline operators will request to remain under RSPA regulation. We estimate that the time for developing each request and submitting it to MMS and RSPA will be about 40 hours. Based on 10 requests at 40 hours each, the total one-time burden of requesting to remain under RSPA regulation will be less than 400 hours. Based on \$35 per hour, we estimate that the total administrative cost to respondents is less than \$14,000 (\$1,400 per request) during the first year that the rule is implemented. In the first year, nearly all producer pipeline operators would have decided whether to automatically

convert to MMS regulation or apply to remain under RSPA regulation. We anticipate that in following years, not more than two operators a year would submit a request to change their regulatory status at a total cost of \$2,800. However, for most following years it is highly unlikely that any request would be made as a result of the proposed rule.

The proposed rule does not have a significant economic effect (less than \$100 million); therefore, RSPA does not consider it to be a major rule. We do not expect there to be any increases in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions to result from implementing the proposed rule. Any indirect effects on costs or prices are anticipated to be negligible.

This proposed rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlement, grants, user fees, or loan programs; or raise novel legal or policy issues.

The proposed rule will not have any effect on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in other markets because the economic effects are minor. Therefore, a Regulatory Impact Analysis is not required under E.O. 12866.

B. Federalism Assessment

The proposed rule would not have substantial direct 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 Executive Order 12612 (October 30, 1987; 52 FR 41685), we have determined that this notice does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) RSPA must consider whether a rulemaking would have a significant impact on a substantial number of small entities.

MMS recently conducted an analysis of 150 operators on the Gulf of Mexico OCS. For publicly-traded operators, numbers of employees and annual sales are readily available on the Internet. MMS was not able to get information on all operators on the OCS. Using the criterion that a small company is one

that employs less than 500 employees, 60 operators are medium-to-large-size entities. Of the remaining operators, 36 are small, based on available data, and 44 others were presumed to be small because no information about them was available on the Internet. In sum, 80 operators on the Gulf of Mexico OCS may be considered to be small.

The above breakdown describes the OCS sector of the natural gas and hazardous liquid industry as a whole and provides the wider context in which to examine the actual community that would be affected by the proposed rule.

Of the 150 production operators in the Gulf of Mexico, only 35 would be directly affected by the proposed rule. Of these 35 operators, 11 are considered to be "small." There are about ten producer pipeline operators on the Pacific OCS that may be affected by the proposed rule, and four of these are considered to be small. Of the small operators to be affected by the proposed rule, almost all are represented by the North American Industry Classification System (NAICS) code 211111, which represents crude petroleum and natural gas producers.

A pipeline company (non-producer) is a "small entity" if it is a liquid pipeline company with fewer than 1,500 employees, or a natural gas pipeline company with gross annual receipts of \$25 million or less. There are about 18 entities operating on the OCS that can be interpreted as "small independent pipeline companies." These small pipeline companies provide transportation services for several non-major oil or gas producers with which they have an "arms-length" but symbiotic business relationship. These companies are represented primarily by NAICS codes 486210 (crude petroleum pipelines) and 486210 (natural gas transmission pipelines).

The larger operators to be affected by the rule mostly fall into either NAICS Code 211111 (crude petroleum and natural gas producers), or NAICS Code 324110, which represents petroleum refining. Companies operating on the OCS and that fall into NAICS Code 324110 tend to be the very large integrated natural gas and hazardous liquid companies.

Two of the larger operators in the Gulf of Mexico that have production pipelines are represented under NAICS Code 486210 (natural gas transmission), and by NAICS Code 221210 (natural gas distribution). These classifications mean that the operators in question normally operate as pipeline companies, and we anticipate that these two operators may choose to remain under RSPA

regulation. Pipeline companies are considered "small" if they have fewer than 1,500 employees, but both of these operators would be considered "large" under the 1,500-employee criterion.

Natural gas and hazardous liquid production and transportation companies are classified under NAICS Codes by the Census Bureau. The Small Business Administration further classifies "small businesses" in the various offshore sectors as follows: (1) Oil and gas producers that have fewer than 500 employees; (2) liquid pipeline companies that have fewer than 1,500 employees; (3) natural gas pipeline companies that have gross annual receipts of \$25 million or less; and (4) offshore oil and gas field exploration service or production service companies that have gross annual receipts of \$5 million or less. There are many companies on the OCS that are "small businesses" by these definitions.

However, the technology necessary for conducting offshore oil and gas exploration and development activities is very complex and costly, and most entities that engage in offshore activities have financial resources disproportionate to their numbers of employees and well beyond what would normally be considered "small business." These entities customarily conduct their operations by contracting with offshore drilling or service companies, and therefore tend to have few employees in relation to their financial resources.

There are up to 150 designated operators of leases and 75 operators of transmission pipelines on the OCS (both large and small operators), and the economic impacts on the oil and gas production and transmission companies directly affected would be minor. All costs imposed by the rule would be small compared to the normal operating and maintenance expenses experienced by offshore pipeline operators. Direct costs to industry for the entire proposed rule total less than \$14,000 for the first year. This rule would not impose any new restrictions on small pipeline service companies or manufacturers, nor will it cause their business practices to change.

We conclude that the proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, I certify, pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this proposal will not, if implemented, have a significant economic impact on a substantial number of small entities. However, we are particularly interested in receiving comments from any small business operators believing otherwise.

This certification is subject to modification as a result of a review of the comments received in response to this proposal.

D. Executive Order 13084

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule effects the Federally managed OCS and does not affect the communities of the Indian tribal governments and nor impose any direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

E. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule does not propose any regulation that:

- (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;
- (2) Imposes substantial direct compliance costs on States and local governments; or
- (3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 (64 FR 43255; August 10, 1999) do not apply.

F. Unfunded Mandates

This proposed rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of over \$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 objectives.

G. Paperwork Reduction Act

This proposed rule does not contain information collection requirements estimated to effect more than ten respondents per year.

H. National Environmental Policy Act

We have analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have determined that this proposed rule would not significantly affect the quality of the human environment. The Environmental Assessment of this proposal is available for review in the docket.

I. Executive Order 13211 (Energy)

We have reviewed this proposed rule in accordance with Executive Order 13211 regarding the energy of Federal regulations and have determined that this proposed rule does not have any adverse effects on energy supply, distribution, or use. Therefore, no reasonable alternatives to this action are necessary.

List of Subjects*49 CFR 191*

Gas, Pipeline safety. Reporting and recordkeeping requirements.

49 CFR Part 192

Hazardous liquid, Natural gas, Pipeline safety, Pipelines, Reporting and recordkeeping requirements.

49 CFR Part 195

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

For the reasons set out in the preamble, 49 CFR Parts 191, 192 and 195 is proposed to be amended as follows.

PART 191—[AMENDED]

1. The authority citation for part 191 would continue to read as follows:

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

2. Section 191.1 would be amended by revising paragraph (b) to read as follows:

§ 191.1 Scope.

* * * * *

(b) * * *

(1) Offshore gathering of gas in State waters upstream from the outlet flange of each facility where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream;

(2) Pipelines on the Outer Continental Shelf that are producer-operated and cross into State waters without first connecting to a transporting operator's facility, upstream (generally seaward) of the last valve on the last production facility (excluding pipeline risers and associated safety equipment). Producing operators may petition the Administrator, or designee, for approval to operate under RSPA regulations governing pipeline design, construction, operation, and maintenance under 49 CFR 190.9;

(3) Pipelines on the Outer Continental Shelf upstream of the point at which

operating responsibility transfers from a producing operator to a transporting operator; or

(4) Onshore gathering of gas outside of the following areas:

(i) An area within the limits of any incorporated or unincorporated city, town, or village.

(ii) Any designated residential or commercial area such as a subdivision, business or shopping center, or community development.

PART 192—[AMENDED]

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

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

2. Section 192.1 would be amended by revising paragraphs (b)(1) through (5) and adding paragraph (b)(6) to read as follows:

§ 192.1 Scope of part.

* * * * *

(b) * * *

(1) Offshore gathering of gas in State waters upstream from the outlet flange of each facility where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream;

(2) Pipelines on the Outer Continental Shelf that are producer-operated and cross into State waters without first connecting to a transporting operator's facility, upstream (generally seaward) of the last valve on the last production facility (excluding pipeline risers and associated safety equipment). Producing operators may petition the Administrator, or designee, for approval to operate under RSPA regulations governing pipeline design, construction, operation, and maintenance under 49 CFR 190.9;

(3) Pipelines on the Outer Continental Shelf upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator;

(4) Onshore gathering of gas outside of the following areas:

(i) An area within the limits of any incorporated or unincorporated city, town, or village.

(ii) Any designated residential or commercial area such as a subdivision, business or shopping center, or community development.

(5) Onshore gathering of gas within inlets of the Gulf of Mexico except as provided in § 192.612; or

(6) Any pipeline system that transports only petroleum gas or petroleum gas/air mixtures to—

(i) Fewer than 10 customers, if no portion of the system is located in a public place; or

(ii) A single customer, if the system is located entirely on the customer's premises (no matter if a portion of the system is located in a public place).

PART 195—[AMENDED]

1. The authority citation for Part 195 would continue to read as follows:

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

2. Section 195.1 would be amended by redesignating paragraphs (b)(7), (8) and (9) as paragraphs (b)(8), (9) and (10), respectively; revising paragraphs (b)(5) and (6); and adding a new paragraph (b)(7) to read as follows:

§ 195.1 Applicability.

* * * * *

(b) * * *

(5) Transportation of hazardous liquid or carbon dioxide in offshore pipelines in State waters which are located upstream from the outlet flange of each facility where hydrocarbons or carbon dioxide are produced or where produced hydrocarbons or carbon dioxide are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream;

(6) Transportation of hazardous liquid or carbon dioxide in Outer Continental Shelf pipelines which are located upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator;

(7) Pipelines on the Outer Continental Shelf that are producer-operated and cross into State waters without first connecting to a transporting operator's facility, upstream (generally seaward) of the last valve on the last production facility (excluding pipeline risers and associated safety equipment). Producing operators may petition the Administrator or designee for approval to operate under RSPA regulations governing pipeline design, construction, operation, and maintenance under 49 CFR 190.9;

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Issued in Washington, DC on March 15, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

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