

entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any record keeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1828 and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1828 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1828 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1828—BONDS AND INSURANCE

2. Revise sections 1828.311–1 and 1828.311–2, and add section 1828.311–270 to read as follows:

1828.311–1 Contract clause.

The contracting officer must insert the clause at FAR 52.228–7, Insurance—Liability to Third Persons, as prescribed in FAR 28.311–1, unless—

(a) Waived by the procurement officer; or

(b) The successful offeror represents in its offer that it is totally immune from tort liability as a State agency or as a charitable institution.

1828.311–2 Agency solicitation provisions and contract clauses.

1828.311–270 NASA solicitation provisions and contract clauses.

(a) The contracting officer must insert the clause at 1852.228–71, Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

(b) The contracting officer must insert the provision at 1852.228–80, Insurance—Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated.

(c) The contracting officer must insert FAR clause 52.228–7 and the associated clause at 1852.228–81, Insurance—

Partial Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution.

(d) The contracting officer must insert the clause at 1852.228–82, Insurance—Total Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend Part 1852 by adding sections 1852.228–80, 1852.228–81, and 1852.228–82 to read as follows:

1852.228–80 Insurance—Immunity From Tort Liability.

As prescribed in 1828.311–270(b), insert the following provision:

Insurance—Immunity From Tort Liability, September, 2000

If the offeror is partially or totally immune from tort liability to third persons as a State agency or as a charitable institution, the offeror will include in its offer a representation to that effect. When the successful offeror represented in its offer that it is immune from tort liability, the following clause(s) will be included in the resulting contract:

(a) When the offeror represents that it is partially immune from tort liability to third persons as a State agency or as a charitable institution, the clause at FAR 52.228–7, Insurance—Liability To Third Persons, and the associated NFS clause 1852.228–81, Insurance—Partial Immunity From Tort Liability, will be included in the contract.

(b) When the offeror represents that it is totally immune from tort liability to third persons as a State agency or as a charitable institution, the clause at NFS 1852.228–82 Insurance—Total Immunity From Tort Liability, will be included in the contract. (End of provision)

1852.228–81 Insurance—Partial Immunity From Tort Liability.

As prescribed in 1828.311–270(c), insert the following clause:

Insurance—Partial Immunity From Tort Liability, September 2000

(a) Except as provided for in paragraph (b) of this clause, the Government does not assume any liability to third persons, nor will the Government reimburse the contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract; and

(b) The contractor need not provide or maintain insurance coverage as required by paragraph (a) of FAR clause 52.228–7, Insurance—Liability To Third Persons, provided that the contractor may obtain any insurance coverage deemed necessary,

subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of FAR clause 52.228–7, for liabilities to third person for which the contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

1852.228–82 Insurance—Total Immunity From Tort Liability.

As prescribed in 1828.311–270(d), insert the following clause:

Insurance—Total Immunity From Tort Liability, September 2000

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the contractor under this contract, the Contractor will immediately notify the contracting officer and promptly furnish copies of all pertinent papers received by the contractor. The Contractor will, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

[FR Doc. 00–23006 Filed 9–7–00; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[RSPA–97–2094; Amdt. Nos. 192–89; 195–69]

RIN 2137–AC54

Pipeline Safety: Underwater Abandoned Pipeline Facilities

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

ACTION: Final rule.

SUMMARY: This rule will require the last operator of an abandoned natural gas or hazardous liquid pipeline facility that is located offshore or crosses under, over or through a commercially navigable waterway to submit a report of the abandonment to the Secretary of Transportation. The results of this final

rule will be a Congressionally mandated central depository of information about underwater abandoned pipeline facilities that the Secretary of Transportation will make available to appropriate Federal and State agencies.

DATES: This rule becomes effective October 10, 2000.

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, 400 Seventh Street, SW, Washington, DC, 20590, or via e-mail to le.herrick@rspa.dot.gov regarding this final rule. You may contact the Dockets Unit, 202-366-5046, for copies of this final rule or material that is referenced herein.

SUPPLEMENTARY INFORMATION:

A. Background

Underwater natural gas and hazardous liquid pipeline facilities are being abandoned at an increasing rate as older facilities reach the end of their use. This trend is expected to continue. Presently, there is no one location where these records of abandonment are maintained. In 1992, Congress directed the Secretary of Transportation to require:

(A) The operator of a pipeline facility abandoned after October 24, 1992, shall report the abandonment to the Secretary in a way that specifies whether the facility has been abandoned properly according to applicable United States Government and State requirements.

(B) Not later than October 24, 1995, the operator of a pipeline facility abandoned before October 24, 1992, shall report to the Secretary reasonably available information related to the facility, including information that a third party possesses. The information shall include the location, size, date, and method of abandonment, whether the facility has been abandoned properly under applicable law, and other relevant information the Secretary may require. Not later than April 24, 1994, the Secretary shall specify how the information shall be reported. The Secretary shall ensure that the Government maintains the information in a way accessible to appropriate Government agencies and State authorities. 49 U.S.C. 60108(c)(6).

On August 30, 1999 we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 47157). In this notice we proposed to implement this Congressional mandate by requiring all operators who have abandoned pipeline facilities offshore or crossing over under or through commercially

navigable waterways to report that abandonment to the Secretary of Transportation through the Research and Special Programs Administration's (RSPA) Associate Administrator for Pipeline Safety. The report would include all reasonably available information related to the facility, including information in the possession of a third party.

NPRM Comments

We received 11 comments to the proposal. Commenters included regulated natural gas distribution companies; refining companies; an interstate natural gas transmission company; natural gas companies engaged in exploration, development, production and gathering; a utility industry consortium; and industry trade organizations. These comments are available in the docket for this rulemaking.

Navigable Waterways

Comment: Several commenters expressed the view that the term, "navigable waters," was open to various interpretations and should be more clearly described in the regulation.

Response: We agree and have included a specific description in this final rule. Under this rule, the affected navigable waterways are those waterways "where a substantial likelihood of commercial navigation exists."

Further guidance in determining the affected waterways is available in a geographic database of navigable waterways in and around the United States created by Oak Ridge National Laboratory and Vanderbilt University. The database, called the National Waterways Network, was created with input from the National Waterway GIS Design Committee, which is comprised of representatives of the U.S. Army Corps of Engineers, U.S. DOT's Bureau of Transportation Statistics (BTS), Volpe National Transportation Systems Center, Maritime Administration, Military Traffic Management Command, Tennessee Valley Authority, U.S. Environmental Protection Agency, U.S. Bureau of Census, U.S. Coast Guard, and the Federal Railroad Administration. The database includes commercially navigable waterways and non-commercially navigable waterways. The database can be downloaded from BTS' website: <http://www.bts.gov/gis/ntatlas/networks.html>.

We will include a map of the commercially navigable waterways portion of the National Waterways Network database in the National Pipeline Mapping System. Operators

will be able to determine which areas of their pipeline intersect these designated commercially navigable waterways, and the public and other government agencies will be able to view pipelines in relation to commercially navigable waterways.

Colorado

Comment: A commenter asked if there are any navigable waterways under this rule in the State of Colorado.

Response: No.

Retroactive Requirement

Comment: Several commenters alleged that a requirement to provide complete information for previously abandoned pipeline facilities was overly burdensome, if not impossible, because the regulations currently in effect require an operator to maintain records for the life of the pipeline facility and, once abandoned, the records are not generally kept.

Response: The requirement for the last operator of a facility to report all reasonably available information, including that which a third party possesses has been mandated by Congress. Therefore, we will require operators to provide any information that they have reasonably available for all pipelines which have been abandoned before October 10, 2000. In order to reduce the burden and to provide sufficient time for operators to integrate the reporting requirements into their routine operations, the report for previously abandoned lines will be due six months from the effective date of the rule.

Multiple lines

Comment: A commenter asked if one or multiple reports were required in a situation where a pipeline operator may be abandoning more than one pipeline facility.

Response: The operator would be required to file separate reports for each abandoned pipeline facility.

Town Gas

Comment: A commenter expressed the view that an unexpected, potential inclusion of some long abandoned "town gas" lines which have been abandoned for decades would be included in this rule and that such a requirement would place an impossible burden on many utility companies.

Response: The retroactive reporting requirement is for information which is readily available to the operator.

Reporting Burden

Comment: Many commenters agreed that the burden for reporting future abandonments would be slight,

although they believed that we had underestimated the actual response time.

Response: In our cost benefit analysis for this final rule we have increased the estimated reporting time to 6 hours per report for future abandonments. This final rule does not require operators to expend resources locating information for previously abandoned lines that is not readily available.

Application

Comment: A commenter recommended that the reporting requirement only apply to transmission lines.

Response: The requirement applies to all lines subject to 49 CFR parts 192 and 195.

Certification

Comment: A commenter asks if it is correct to assume that the required certification stating that the facility has been abandoned according to all applicable State and Federal requirements means that it was abandoned according to all applicable requirements at the time of abandonment and not current requirements.

Response: Yes. A certification could state: "To the best of my knowledge, I have provided all of the requested information that is reasonably available about the subject abandoned pipeline facility and, to the best of my knowledge, this abandoned pipeline facility was abandoned in accordance with all applicable State and Federal requirements in effect at the time of the abandonment."

Technical Committee Consideration

We presented the NPRM to the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) at a meeting in Washington, DC on November 3, 1999. The TPSSC is RSPA's statutory advisory committee for gas pipeline safety and the THLPSSC is RSPA's statutory advisory committee for hazardous liquid pipeline safety. Each committee has 15 members, representing industry, government, and the public, who are qualified to consider the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed pipeline safety standards. Although this final rule does not impose a safety standard, the THLPSSC voted 3 in favor and 5 against the proposal and the TPSSC voted 1 in favor and 10 against the proposal. A transcript and report of the committee's consideration of the NPRM is available in the docket.

The technical advisory committees discussion centered on the cost effectiveness and reasonableness of the proposal. In this final rule we have addressed these concerns by further clarifying the intended scope of the rule, and have provided a more detailed description of commercially navigable waterways. We have also clarified that retroactive reports will be limited to that information which is readily available to the operator. We have also increased the potential for effective use of the information by requesting that the information on future abandonments be submitted in a manner which will yield uniform and statistically comparable data. Operators are requested to report abandonments to the National Pipeline Mapping System's National Repository. Incorporating this information into a national data base will reduce the costs of maintaining separate data on abandoned lines and increase the effective use of the information.

Further advisory committee discussion addressed whether information on abandoned facilities could be obtained from other government agencies. We agree that a collection of information held by other agencies will augment the available information. We have initiated discussions with the Department of the Interior's Minerals Management Service, U.S. Army Corp of Engineers and the various States to determine if the information they currently hold is compatible with our information collection requirements.

However, the Congressional mandate requires the Secretary of Transportation to collect the information from the operators and to make that information available to other Federal and State agencies.

B. Report Requirements

The preferred method is to submit data on abandoned pipeline facilities to the National Pipeline Mapping System (NPMS) in accordance with the NPMS "Standards for Pipeline and Liquefied Natural Gas Operator Submissions." To obtain a copy of the NPMS Standards, please refer to the NPMS homepage at www.npms.rspa.dot.gov or contact the NPMS National Repository at 703-317-3073. Digital data is preferred, but hard copy submissions are acceptable if they meet the NPMS Standards. In addition to the NPMS required attributes, operators are required to submit the date of abandonment, attributes for diameter, method of abandonment, and certification that the abandonment was completed according to applicable laws. Operators may refer to the NPMS Standards for details in preparing data

submissions. The NPMS Standards also includes details of how to submit data and to whom. Alternatively, data may be submitted by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax: (202) 366-4566; e-mail: roger.little@rspa.dot.gov. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that the facility was abandoned according to all applicable laws.

Regulatory Analysis and Notices

A. E.O. 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, is not subject to review by the Office of Management and Budget. The rule is not considered significant under the policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). Those operators who abandon pipeline facilities should have the required information to compile the abandonment report readily available because of the extensive pipeline abandonment procedures required by other agencies. The report on previously abandoned pipeline facilities is limited to readily available information on size, date of abandonment, method of abandonment, and whether the pipeline facility was abandoned in accordance with applicable laws in effect at the time of the abandonment.

Further, several commenters stated that OPS underestimated the time to prepare and file the report. A commenter contended the report would take 4-8 hours. Assuming 400 abandonments per year, the cost of this rule would be \$96,000 annually. (400 reports $\times$ 6 hours = 2400 hours $\times$ \$40 hourly wage = \$96,000). Because of the minimal cost of this rule no regulatory evaluation was necessary.

B. Federalism Assessment

This final rule will 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 (52 FR 41685, October 30, 1987), we

have determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

C. Executive Order 13084—Indian Tribal Governments

We believe that revised regulations from this final rule would have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Therefore, the funding and consultation requirements of this Executive Order would not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each agency to review regulations and assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. Based on the estimated \$96,000 annual cost of the rule (discussed above), RSPA believes this final rule would not have a significant economic impact on a substantial number of small entities. Because the average time to write a report required by this proposed regulation would be 6 hours of operator time per abandonment, the impact of this regulation will be minimal. Therefore, I certify, pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this final rule will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates

This final rule will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will 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 of the Congressional mandate.

F. Paperwork Reduction Act

This final rule contains information collection requirements in 49 CFR 192.727 and 49 CFR 195.59 for the last operator of an abandoned underwater pipeline facility. This requirement was previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB approval number is 2137–0601. However, a revised paperwork reduction analysis has been submitted to OMB to reflect revised burden estimate numbers.

G. National Environmental Policy Act

We have analyzed this final rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have determined that this final rule will not significantly affect the quality of the human environment. An Environmental Assessment is in the docket.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to reference this action in the Unified Agenda.

List of Subjects

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.

In consideration of the foregoing, RSPA hereby amends parts 192 and 195 of title 49 of the Code of Federal Regulations as follows:

Subpart A—General

PART 192—[AMENDED]

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

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

2. Section 192.3 is amended by adding the definition of *Abandoned* in alphabetical order to read as follows:

§ 192.3 Definitions.

* * * * *

Abandoned means permanently removed from service.

* * * * *

3. Section 192.727 is amended by adding paragraph (g) to read as follows:

§ 192.727 Abandonment or deactivation of facilities.

* * * * *

(g) For each abandoned offshore pipeline facility or each abandoned onshore pipeline facility that crosses over, under or through a commercially navigable waterway, the last operator of that facility must file a report upon abandonment of that facility.

(1) The preferred method to submit data on pipeline facilities abandoned

after October 10, 2000 is to the National Pipeline Mapping System (NPMS) in accordance with the NPMS “Standards for Pipeline and Liquefied Natural Gas Operator Submissions.” To obtain a copy of the NPMS Standards, please refer to the NPMS homepage at www.npms.rspa.dot.gov or contact the NPMS National Repository at 703–317–3073. A digital data format is preferred, but hard copy submissions are acceptable if they comply with the NPMS Standards. In addition to the NPMS-required attributes, operators must submit the date of abandonment, diameter, method of abandonment, and certification that, to the best of the operator’s knowledge, all of the reasonably available information requested was provided and, to the best of the operator’s knowledge, the abandonment was completed in accordance with applicable laws. Refer to the NPMS Standards for details in preparing your data for submission. The NPMS Standards also include details of how to submit data. Alternatively, operators may submit reports by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax (202) 366–4566; e-mail, roger.little@rspa.dot.gov. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that the facility has been abandoned in accordance with all applicable laws.

(2) Data on pipeline facilities abandoned before October 10, 2000 must be filed by before April 10, 2000. Operators may submit reports by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax (202) 366–4566; e-mail, roger.little@rspa.dot.gov. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that the facility has been abandoned in accordance with all applicable laws.

PART 195—[AMENDED]

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

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

2. Section 195.2 is amended by adding the definition of *Abandoned* in alphabetical order to read as follows:

§ 195.2 Definitions.

* * * * *

Abandoned means permanently removed from service.

* * * * *

3. Part 195 is amended by adding a new § 195.59 to read as follows:

§ 195.59 Abandoned underwater facilities report.

For each abandoned offshore pipeline facility or each abandoned onshore pipeline facility that crosses over, under or through a commercially navigable waterway, the last operator of that facility must file a report upon abandonment of that facility.

(a) The preferred method to submit data on pipeline facilities abandoned after October 10, 2000 is to the National Pipeline Mapping System (NPMS) in accordance with the NPMS "Standards for Pipeline and Liquefied Natural Gas Operator Submissions." To obtain a copy of the NPMS Standards, please refer to the NPMS homepage at www.npms.rspa.dot.gov or contact the NPMS National Repository at 703-317-3073. A digital data format is preferred, but hard copy submissions are acceptable if they comply with the NPMS Standards. In addition to the NPMS-required attributes, operators must submit the date of abandonment,

diameter, method of abandonment, and certification that, to the best of the operator's knowledge, all of the reasonably available information requested was provided and, to the best of the operator's knowledge, the abandonment was completed in accordance with applicable laws. Refer to the NPMS Standards for details in preparing your data for submission. The NPMS Standards also include details of how to submit data. Alternatively, operators may submit reports by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax (202) 366-4566; e-mail, roger.little@rspa.dot.gov. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that the facility has been abandoned in accordance with all applicable laws.

(b) Data on pipeline facilities abandoned before October 10, 2000 must be filed by before April 10, 2001. Operators may submit reports by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax (202) 366-4566; e-mail, roger.little@rspa.dot.gov. The

information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that the facility has been abandoned in accordance with all applicable laws.

4. Section 195.402(c)(10) is revised to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(c) * * *

(1) * * *

(10) Abandoning pipeline facilities, including safe disconnection from an operating pipeline system, purging of combustibles, and sealing abandoned facilities left in place to minimize safety and environmental hazards. For each abandoned offshore pipeline facility or each abandoned onshore pipeline facility that crosses over, under or through commercially navigable waterways the last operator of that facility must file a report upon abandonment of that facility in accordance with § 195.59 of this part.

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Issued in Washington, DC, on August 28, 2000.

John P. Murray,

Acting Deputy Administrator.

[FR Doc. 00-22986 Filed 9-7-00; 8:45 am]

BILLING CODE 4910-60-P