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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 192 and 195

#### Pipeline Safety: Alternative Mitigation Measures for Required Repairs Delayed by a Need To Obtain Permits

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

**ACTION:** Interpretation.

**SUMMARY:** Congress directed the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) to revise its pipeline safety regulations, if necessary, to allow operators to take alternative mitigation measures while they seek governmental permits required for repairs. As RSPA/OPS interprets the pipeline safety regulations, they already allow such measures. Revising the regulations is not necessary.

**DATES:** Effective June 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mike Israni by phone at (202) 366-4571, by fax at (202) 366-4566, or by e-mail at [mike.israni@rspa.dot.gov](mailto:mike.israni@rspa.dot.gov)

**SUPPLEMENTARY INFORMATION:** The Pipeline Safety Improvement Act of 2002 amended the Federal pipeline safety laws to require that the Secretary of Transportation revise pipeline safety regulations, as needed, to allow operators to implement alternative mitigation measures if repairs to pipelines cannot be completed within specified time frames. Specifically, 49 U.S.C. section 60133 provides, in part:

#### (d) INTERIM OPERATIONAL ALTERNATIVES.

(1) IN GENERAL \* \* \* subject to the limitations in paragraph (2), the Secretary of Transportation shall revise the regulations of the Department, to the extent necessary, to permit a pipeline operator subject to time periods for repair specified by rule by the Secretary to implement alternative mitigation measures until all applicable permits have been granted.

(2) LIMITATIONS. "The regulations issued by the Secretary pursuant to this subsection shall not allow an operator to implement alternative mitigation measures pursuant to paragraph (1) unless—

(A) Allowing the operator to implement such measures would be consistent with the protection of human health, public safety, and the environment;

(B) The operator, with respect to a particular repair project, has applied for and is pursuing diligently and in good faith all required Federal, State, and local permits to carry out the project; and

(C) The proposed alternative mitigation measures are not incompatible with pipeline safety.

RSPA/OPS has reviewed the existing pipeline safety regulations and determined that no changes to these regulations are necessary to implement this provision. As explained below, RSPA/OPS interprets existing pipeline repair requirements to allow for alternative mitigative measures while an operator has applied for and is waiting for a permit in order to effectuate a repair.

General pipeline facility repair requirements in 49 CFR 192.703 (for natural gas pipelines) and 49 CFR 195.401 (for hazardous liquid pipelines) require repair of conditions that are "unsafe" or "could adversely affect the safe operation of [the] pipeline system," but do not specify a time period in which the required repairs must be made. These provisions, instead, require an operator to take actions necessary to assure the pipeline is safe and to take these actions "within a reasonable time." Thus, for the non immediate hazard conditions, a reasonable repair time allows for an operator to obtain the Federal, state or local permits necessary to make a repair. RSPA/OPS expects an operator to exercise diligence in obtaining the necessary permits by being able to demonstrate that it has applied for the applicable permit and is taking all necessary steps for the permit to be processed and granted. In this interim period until the permit is granted, an operator is allowed to take alternative actions to mitigate the condition, as long as the actions are compatible with pipeline safety.

The reasonable time provision does not apply to an immediate hazard condition. If circumstances associated with a particular pipeline problem are such that safety is immediately in jeopardy, then immediate action is appropriate and delay would be inconsistent with the protection of human health, public safety, and the environment.

The only current regulation that specifies time periods for pipeline repairs is the recently promulgated integrity management rule for hazardous liquid pipelines, 49 CFR 195.452. The remediation requirements of this regulation require an operator to remediate defects meeting certain criteria immediately or within 60 or 180 days, depending on the defect's severity. This regulation further provides for an operator to take alternative mitigation measures if it cannot make the repair within the specified period for any reason, including being unable to obtain

required permits. Specifically, 49 CFR 195.452 (h)(3) provides in part:

(3) *Schedule for evaluation and remediation.* An operator must complete remediation of a condition according to a schedule that prioritizes the conditions for evaluation and remediation. If an operator cannot meet the schedule for any condition, the operator must justify the reasons why it cannot meet the schedule and that the changed schedule will not jeopardize public safety or environmental protection. An operator must notify OPS if the operator cannot meet the schedule and cannot provide safety through a temporary reduction in operating pressure.

Thus, if an operator must obtain a permit to carry out a repair for the operator's integrity management program, and cannot obtain the permit and make the repair within the 60- or 180-day period, an operator may either reduce operating pressure as an interim mitigative measure or, if it determines that pressure reduction is impracticable, submit a notification to RSPA/OPS explaining how it will ensure safety in the interim period, and then continue operation until the permit is granted and the repair made. An operator must complete the repairs in a time frame that does not jeopardize safety or environmental protection. Again, if the specified time period cannot be met because the operator is waiting for a permit to be granted, RSPA/OPS expects an operator to show it has applied for the permit and is taking all necessary steps for the permit to be processed and granted.

RSPA/OPS recently proposed integrity management remediation requirements for natural gas transmission pipelines (*see* 68 FR 4278; Jan. 28, 2003). Similar to the remediation requirements for hazardous liquid integrity programs, until a repair is made, the proposed regulation would allow continued operation with a reduction in operating pressure or notification to RSPA/OPS, if pressure reduction is impracticable. Under the proposal, an operator would be able to implement alternative mitigative measures while it has applied for and is waiting for the permit to be granted.

RSPA/OPS discussed the need for additional requirements including alternative mitigative measures with its advisory committees, the Technical Hazardous Liquid Pipeline Safety Standards Committee and the Technical Pipeline Safety Standards Committee, at a joint meeting held on March 26, 2003. The Committees agreed that the existing allowance for pressure reduction or case-by-case definition of alternative measures, via operator notification to RSPA/OPS, represents viable alternative