Departmental activities stemming from the Act including publication of information on each system of records pertinent to DOT programs and operations. The provisions of the Privacy Act authorize the Assistant Secretary to publish notices concerning these systems of records. They do not, however, make provision for the issuance of notices which must precede their publication.

This section confers authority on the Assistant Secretary for Administration to issue notices, to be published in the Federal Register, covering systems of records pertinent to programs and operations maintained by the Department in connection with the Privacy Act.

Accordingly, Part I of Title 49 of the Code of Federal Regulations is amended by adding a new paragraph (m) to § 1.59, to read as follows:

§ 1.59 Delegations to the Assistant Secretary for Administration.

* * * * *

(m) Issue notices of Department of Transportation systems of records as required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4), (11)).

(Sec. 9(e)(1), Department of Transportation Act. (49 U.S.C. 1657(e)).)

Issued in Washington, D.C. on November 21, 1979.

Neil Goldschmidt,

Secretary of Transportation.

[FR Doc. 79-37141 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-62-M

Materials Transportation Bureau

49 CFR Part 195

[Amdt. 195-16; Docket PS-51]

Transportation of Liquids by Pipeline; Reconsideration of Procedures for Operations, Maintenance and Emergencies

AGENCY: Materials Transportation Bureau (MTB).

ACTION: Final rule.

SUMMARY: A final rule was published July 16, 1979 (44 FR 41197), establishing the essentials for written procedures to be prepared and followed by operators of liquid pipelines for handling pipeline operations, maintenance and emergencies and for training, communications and public education. In response to six petitions for reconsideration, DOT has made certain changes to that final rule. Among these changes are: (1) to provide for the use of fail safe equipment in lieu of monitoring pipeline operations from attended locations, (2) to more clearly define those facilities which would require procedures for immediate response by the carrier in event of malfunction, and (3) to permit conversion of certain pipelines to service under Part 195 which were not designed and constructed in accordance with this Part.

DATE: Effective date of this final rule is July 15, 1980 except § 195.402(c)(8) & (c)(9) do not become effective until July 15, 1981.

FOR FURTHER INFORMATION CONTACT: Frank Robinson, 202-426-2392.

SUPPLEMENTARY INFORMATION: Final rules (Amendment 195-15) were published (44 FR 41197, July 16, 1979) establishing the essentials of written procedures that are prepared and followed by carriers for handling pipeline operations, maintenance and emergencies. The Amendment also included new requirements for training, communications and public education. The American Petroleum Institute (API), Phillips Petroleum Company, Texas Eastern Products Pipeline Company, Exxon Company U.S.A., Exxon Pipeline Company, and Mid-America Pipeline System submitted petitions for reconsideration of various portions of the final rule. The disposition of the petitions together with the reasons for granting or denying the petitions, and the amended rules as a result of the petitions follow:

Scope of Rules: The API stated that the scope of the rules is vague. The API argued that use of the term " hazardous liquid pipelines" in the Summary portion of the final rules document makes it unclear whether the rules apply to all liquid pipelines or to Highly Volatile Liquid (HVL) pipelines only. The MTB disagrees. The rules themselves reveal which rules apply to all liquid pipelines and which apply to HVL pipelines only. Further, the Supplementary Information concerning General Requirements stated "The proposed regulations and final regulations apply to all liquid commodity pipelines operated by carriers engaged in interstate or foreign commerce with special provisions for HVL pipelines." The MTB believes the scope of the rules is clear as written.

Applicability of Rules to All Commodities

Three petitioners argued that neither the notice of proposed rulemaking (NPRM) nor the final rules document contained justification for applying the procedural rules to all hazardous liquid pipelines and recommended that the final rules apply only to pipelines transporting HVL. MTB disagrees with this view. The requirements for carriers to have written procedures to handle normal operations, abnormal operations, and emergencies for all liquid pipelines were prescribed by § 195.402 at the time Part 195 was adopted, long before Amendment 195-15 was written. Consequently, Amendment 195-15 does not establish a new requirement for carriers to have written procedures nor did it extend the existing rule to include additional commodities. Rather, it specified items that must be covered in complying with existing requirements. Further, although the NTSB report (NTSB-78-19) and the Battelle Study (DOT/OPS-75/06), quoted in the NPRM concern highly volatile liquids, the MTB cited these reports as data to support the need for carriers to have adequate procedures on all their pipelines rather than as data to indicate the need for better procedures on HVL pipelines only. Other NTSB reports not involving HVL also could have been cited as demonstrating the need for adequate procedures. Some of these reports are NTSB—PAR—73-2 "Crude Oil Explosion at Hearne, Texas", and NTSB—PAR—76-3, "Crude Oil Terminal Fire Near Lima, Ohio". In both of these accidents involving crude oil, lack of adequate procedures contributed to the cause of the accident. Approximately 10 percent of liquid pipeline accidents reported annually to the DOT on Form 7000-1 result from incorrect operations by carrier personnel. Additionally, many NTSB reports indicate that although incorrect operation may not have been the cause, the consequences of many liquid pipeline failures could have been lessened if the carriers had had adequate procedures for handling abnormal operations and emergencies. In view of the foregoing, the petitions to amend the final rules to be applicable only to HVL pipelines is denied.

Duplicate Regulations

One petitioner argued that safety considerations involving offshore liquid pipelines are adequately covered by OCS Orders No. 8 and 9 issued by the United States Geological Survey (USGS) of the Department of the Interior (DOI). The petitioner argued that these orders already provide for detailed contingency plans and training of personnel much like those prescribed by the final rule. MTB believes this petitioner misunderstands the applicability of the cited USGS Orders and Part 195 to offshore pipelines. A Memorandum of Understanding (MOU) was published in the Federal Register June 11, 1976 (FR 41, 23746), delineating DOT and DOI offshore pipeline responsibilities in order to avoid duplication of regulatory

efforts. This delineation of regulatory responsibilities was incorporated in Part 195 by Amendment 195-11, which modified the scope of Part 195 (§ 195.1) to exclude from coverage those offshore pipelines subject to DOI responsibilities under the MOU. Thus, OCS orders do not apply to safety aspects of offshore pipelines subject to Part 195.

Coordination With the Department of Interior

One petitioner argued that DOT failed to coordinate this rulemaking with DOI. In fact, this rulemaking was developed with DOI participation as evidenced by written comments submitted by DOI and available for inspection in the public docket.

§ 195.401(c)

One petitioner noted that the new § 195.401(c) did not contain the introductory words "Except as provided in § 195.5" as were in the previous § 195.402(d) [§ 195.402(d) was redesignated as § 195.401(c)] and that the Supplementary Information of the final rule made no mention of this deletion. The petitioner noted that the deletion was significant in that it would prevent conversion of pipelines to service under Part 195 unless the pipeline was designed and constructed in accordance with the Part.

The deletion of the introductory words "Except as provided in § 195.5" in § 195.401(c) was an inadvertent omission. Section 195.401(c) in this amendment contains the correction.

§ 195.402(a)

One petitioner recommended that the new § 195.402(a) be deleted, arguing that procedures for normal operations can give a carrier a competitive advantage and that disclosure of these procedures to the MTB might result in the loss of this advantage. The MTB believes this assertion strains credulity. Further, MTB field inspection personnel historically have examined carriers' operating procedures prepared under Part 195 without creating the sort of difficulty envisioned by the petitioner. Consequently, § 195.402(a) remains unchanged.

§ 195.402(b)

One petitioner recommended that the provisions for amendment of a carrier's procedures contained in § 195.402(b) apply to emergency procedures only, arguing that review of procedures for normal and abnormal operations would be impractical because of the time required to conduct the review. The MTB disagrees. As noted above concerning the applicability of rules to all commodities, approximately 10 percent of all liquid pipeline accidents are caused by improper operation by carrier personnel, and it is to reduce the incidence of these accidents as well as improve carriers' emergency responses that these rules have been promulgated. The MTB believes that a provision for review of all procedures is essential to ensure their adequacy and that time devoted to this review will pay rich dividends.

§ 195.402(c)(4) and § 195.402(c)(14)

Three petitioners recommended that § 195.402(c)(4) and § 195.402(c)(14) be deleted arguing that (1) § 195.402(c)(4) implies that carriers operate facilities which pose unacceptable safety hazards, (2) both paragraphs defy compliance, (3) the wording of the paragraphs does not inform carriers of their responsibilities, and (4) the substance of § 195.402(c)(4) is covered in other paragraphs under § 195.402(c). The MTB does not agree that the substance of § 195.402(c)(4) is covered elsewhere. The MTB does agree, however, that the wording of § 195.402(c)(4) can be improved to more clearly define the carrier's responsibilities and to dispel the inference that some existing facilities pose unacceptable safety hazards. As stated in Amendment 195-15, the intent of § 195.402(c)(4) is to require a carrier to analyze its pipeline system and its practices, and to identify those facilities and practices that would cause hazards to the public or to the system itself if failure or malfunction did occur. In order to more clearly set forth this intent, § 195.402(c)(4) has been rewritten to require the carrier to determine "those facilities which are located in areas that would require an immediate response by the carrier to avoid hazards to the public if the facilities failed or malfunctioned". This revised wording recognizes (1) that the location of a facility largely determines whether it might become a hazard to the public, and (2) a hazardous situation would be one that requires an immediate response by the carrier. It should be noted that reference to a carrier's "practices" has been deleted to avoid the misunderstanding that carriers might knowingly conduct hazardous practices. Section 195.14(c)(14) has been deleted as unnecessary because MTB believes it duplicates § 195.402(a) which requires carriers to prepare procedures to assure safe operation and maintenance.

§ 195.402(c)(5)

One commenter recommended the deletion of § 195.402(c)(5) arguing that (1) all carriers analyze pipeline failures without being required to do so and (2) cooperation with the Secretary is addressed in § 195.60. The MTB does not agree that all carriers adequately analyze all accidents to determine the causes; hence, there is a need to develop and follow procedures for these analyses. The wording within the parenthesis "in cooperation with the Secretary when appropriate" has been deleted from § 195.402(c)(5) to avoid duplication of, or confusion with, the requirements of § 195.60.

§ 195.402(c)(8), (c)(9), and (d)(2)

Five petitioners argued that § 195.402(c)(8) and (c)(9) are needlessly restrictive because these paragraphs provide no alternative to monitoring pipeline operational data from an attended location as a means to ensure safety. These petitioners argued that adequate safety is customarily provided by fail safe equipment and that use of such equipment should be allowed as an alternative to personnel monitoring. The MTB agrees with this view. Section 195.402 (c)(8) and (c)(9) have been amended to provide for the use of fail safe equipment.

Four peitioners noted that the words "points of receipt and delivery" in § 195.402(c)(9) and "inlet and outlet facilities" in § 195.402(d)(2) can be interpreted to require that all points of connection between pipelines where transfer of commodity is made would have to be monitored for safe operation. These petitioners argued that "detecting abnormal operating conditions" at these points as required by § 195.402(c)(9) and "checking variations from normal operation" as required by § 195.402(d)(2) would be inordinately expensive and would provide no increase in public safety. The petitioners argued that the cost to install the necessary telemetry equipment offshore and at remote locations onshore at these connection points would be very large.

The intent of § 195.402(c)(9) and § 195.402(d)(2) is to require carriers to detect abnormal conditions that can occur during transfer operations and to check for any further variations from normal operation after detected abnormalities have ended. MTB agrees that connection points between pipelines are not appropriate places to look for signs of abnormal operations. Detection can be more readily accomplished where the transfer operations are controlled. To clarify this intent, § 195.402(c)(9) has been rewritten to require, in the case of facilities not equipped to fail safe, monitoring of facilities "that control receipt and delivery of the commodity". The words "at outlet and inlet facilities" have been

deleted from § 195.402(d)(2) to avoid the confusion with points of connection between pipelines. The wording of this section, as amended, would still require carriers to check for operational/irregularities at points monitored under § 195.402(c)(9).

The words "including pressure and flow rates" have been deleted from § 195.402(d)(2). Although none of the petitioners made this specific recommendation, this deletion was made to allow greater flexibility to select appropriate means to ensure the integrity and safe operation of the pipeline system.

One commenter asserted that monitoring equipment would detect the occurrence of an accident but would not prevent an accident from occurring. The MTB believes that monitoring pipeline operational data can provide information to the carrier so that many accidents can be avoided and the effects of unavoidable accidents lessened. It is with this intent that § 195.402(c) (8) and (9) have been promulgated.

§ 195.402 (d)(1)(ii), and (d)(3).

One petitioner recommended that the requirement to respond to decreases in pressure or flow rate be deleted from § 195.402(d)(1)(ii) and that correcting abnormal operation of flow control equipment be deleted from § 195.402(d)(3) arguing that the only design limit which would lessen safety is the strength limit of the pipe and components. The MTB disagrees. Operating design limits are those limits or ranges of pressure, flow, temperature, etc., that a carrier imposes on its pipeline system to define normal operation. Operation outside these limits or ranges indicates an abnormal condition which should be investigated and corrected to avoid approaching the strength limits of the system and the potential for failure. The MTB believes these tasks are essential to ensure safety; hence these paragraphs remain unchanged.

§ 195.440

One petitioner objected to § 195.440 arguing that since virtually all public officials speak English, there is no reason to duplicate an educational program in other languages. The intent of § 195.440 is not to duplicate educational programs where English is commonly spoken, but where English is not commonly spoken, to conduct programs both in English and in the common language. Further, although it may be true that virtually all public officials speak English, the intent of this section is to require education of the public rather than public officials. Since the wording of the section conveys this intent, the section is not changed.

Costs

Five petitioners argued that the cost to comply with Amendment 195–15 would far outweigh the benefits. The costs arose largely because of the telemetering that would have been required by § 195.402(c)(8), (9) and d(2), according to these commenters. Because these paragraphs have been amended to permit installation of fail safe equipment in lieu of monitoring data from an attended location, and because the requirement to monitor pipeline data at "points of receipt and delivery" in § 195.402(c)(9) and at "inlet and outlet facilities" in § 195.402(d)(2) has been deleted, the MTB believes the expected cost of compliance with this final rule is clearly outweighed by the public safety benefits to be achieved by such compliance.

Time for Compliance

Two petitioners argued that compliance with Amendment 195–15 would not be possible within the one year prescribed by the Amendment. These petitioners argued that up to four years would be required to acquire and install the necessary telemetry equipment required by the Amendment. Because § 195.402(c)(8) and (9) have been revised to allow use of fail safe equipment, (much of which is already installed) in lieu of telemetry equipment, the MTB believes the time needed for compliance has been substantially reduced. However, in view of the time for compliance recommended by the petitioners, the MTB has extended the time as noted in the effective date for part of this final rule one year to July 15, 1981 to allow for orderly engineering, procurement, and installation of the equipment required by § 195.402(c)(8) and (9). The effective date for the remainder of the final rule remains as July 15, 1980.

Metrication

One commenter objected to the use of metric units in the definition of "HVL" arguing that metrication should be introduced as a separate rulemaking. The MTB does not consider metrication an issue subject to reconsideration in this proceeding or a matter for future rulemaking. The MTB has announced, consistent with Departmental policy, that the Federal pipelines safety standards in Parts 192 and 195 will be gradually modified to include metric units as new rules are adopted and existing rules are amended.

The MTB has determined that the provisions of this final rule will not result in a major economic impact under the terms of Executive Order 12044 and DOT implementing procedures (44 FR 11034). A Final Evaluation is available in the public docket.

In view of the foregoing, 49 CFR Part 195 is amended as follows:

1. By amending § 195.401(c) to read as follows:

§ 195.401 General requirements.

* * * * *

(c) Except as provided in § 195.5, no carrier may operate any part of a pipeline system upon which construction was begun after March 31, 1970, or in the case of offshore pipelines located between a production facility and a carrier's trunkline reception point, after July 31, 1977, unless it was designed and constructed as required by this part.

2. In § 195.402, by amending paragraphs (c)(4), (5), (8), and (9) and (d)(2) to read as follows, and by deleting paragraph (c)(14):

§ 195.402 Procedural manual for operations, maintenance and emergencies.

* * * * *

(c) * * *

(4) Determining which pipeline facilities are located in areas that would require an immediate response by the carrier to prevent hazards to the public if the facilities failed or malfunctioned.

(5) Analyzing pipeline accidents to determine their causes.

* * * * *

(8) In the case of a pipeline that is not equipped to fail safe, monitoring from an attended location pipeline pressure during startup until steady state pressure and flow conditions are reached and during shut-in to assure operation within limits prescribed by § 195.406.

(9) In the case of facilities not equipped to fail safe that are identified under § 195.402(c)(4) or that control receipt and delivery of the commodity, detecting abnormal operating conditions by monitoring pressure, temperature, flow or other appropriate operational data and transmitting this data to an attended location.

* * * * *

(d) * * *

(2) Checking variations from normal operation after abnormal operation has ended at sufficient critical locations in the system to determine continued integrity and safe operation.

* * * * *

(18 U.S.C. 831–835, 49 U.S.C. 1655, 491.53(b), App. A of Part 1)

Issued in Washington, D.C. on November 29, 1979.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 79-37349 Filed 12-5-79; 8:45 am]

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INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1043, 1045B, 1046

[Ex Parte No. MC-96 (Sub-No. 2)]

Passenger Broker Entry Control

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The rules in this document establish a simplified licensing procedure for obtaining a passenger broker license. Applicants found fit will be granted a 3-year limited term license. A permanent license will be granted upon reapplication and a second finding of fitness. Applications may be opposed only on the basis that applicant is not fit to conduct a broker operation. The new application process is found at the end of this document under "Adopted Rules."

EFFECTIVE DATE: Applications will be accepted until February 4, 1980.

FOR FURTHER INFORMATION CONTACT: Peter Metrinko, 202-275-7885 or Donald J. Shaw, Jr., 202-275-7292.

SUPPLEMENTARY INFORMATION: For copies of the decision and simplified application process write: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423. Or call toll free: (800) 424-9312. This decision establishes a simplified licensing procedure for persons wishing to perform operations as passenger brokers. Arrangement of motorcoach tours, between all points in the United States, will be authorized under the issued licenses. This simplified licensing procedure is consistent with the public interest and the national transportation policy. Applicants for a passenger broker license need only comply with the letter-application filing requirements listed below under "Adopted Rules".

Procedural History

By publication in the March 27, 1979, Federal Register, 44 FR 18459, comments were requested on whether the licensing procedure for passenger brokers should be changed. The notice of proposed rulemaking was published as Ex Parte No. MC-96, *Entry Control of Brokers.* Subsequently, the base proceeding was divided up into four proceedings. See Ex Parte No. 96 (Sub-No. 1), Passenger Broker Practices, (not printed) decided July 25, 1979, 44 FR 46847. The decision here deals only with the question of passenger broker entry control.

Current Procedures

Under current procedures, applicants are required to fill out an OP-OR-11 form, and await publication of the notice of the application in the Federal Register. Opposition to the application may be based on the issue of fitness, or on the grounds that a grant of the application will not be consistent with the public interest.[1] The application may be processed under the modified procedure, see 49 CFR 1100.247, or under oral hearing procedures.

Legislative History Behind Passenger Broker Regulation

Present broker regulation is largely governed by 49 U.S.C. 10924 (formerly, section 211 of the Interstate Commerce Act). The legislative history is somewhat sparse. The Commission examined the legislative history of broker regulation in *Carla Ticket Service, Inc., Broker Application,* 94 M.C.C. 579, 580-581 (1964):

> * * * The legislative history of section 211 of the act clearly reveals that the primary purpose of Congress in regulating motor transportation brokers is to protect carriers and the traveling and the shipping public against dishonest and financially unstable middlemen in the transportation industry. Although this may be the primary objective of section 211 of the act, it does not follow that this is the sole objective of section 211. If financial integrity and stability were the sole aim of regulation in this area, it would have been sufficient for Congress to have formulated a statutory standard in section 211(b) of the act which would have limited our function in broker application proceedings to determine whether or not the applicant is fit, willing, and able to perform the proposed service. Instead, the statutory standard formulated by Congress in section 211(b), in terms of which all broker applications must be evaluated, requires us to find (1) that the applicant is fit, willing, and able to perform the proposed service, and (2) that the proposed brokerage operation is or will be consistent with the public interest and the national transportation policy. As a matter of statutory construction, no word or clause in a statute should be rejected as superfluous or meaningless, but must be given its due force and meaning appropriate to the context, albeit not a strained or unnatural meaning. Cf., *Keystone Transp. Co. Contract Carrier Application,* 19 M.C.C. 475, 492. The "public interest" aspect of the involved statutory standard obviously encompasses a broader range of deliberation than does the "fitness" aspect of the statutory standard. Therefore, it seems clear to us that Congress intended, by requiring consideration of the "public interest" in section 211(b) of the Act, that our evaluation of broker applications on their merits not be limited to the issue of an applicant's fitness.
>
> It is not clear from the legislative history as to whether or not the "public interest" aspect of the standard enunciated in section 211(b) requires some consideration of relevant competitive factors in our judging broker applications on their merits. However, we think it significant that when section 211(b) was enacted, although Congress was cognizant of the fact that Commission proceedings were [usually] adversary in nature entailing the development of evidence relating to competitive factors among others, we were not directed to deviate from this method of procedure. Despite changes in other language of this particular section and reconsideration of the entire act, Congress has not seen fit to change this standard or otherwise suggest that our prior interpretation of section 211(b) is in error. * * * Under all circumstances we do not believe that Congress intended that the Commission be precluded from giving any consideration to competition in broker application cases.
>
> Consistent with the legislative history of section 211 broker applicants are required to show that their services will contribute something of value or be of benefit to carriers or the public. Consideration of existing broker service is, therefore, relevant to broker applications for it is obvious that the creation of needless duplicative services will neither advance the primary purpose of section 211 nor be of benefit to anyone.

Judicial review of the Commission's broker jurisdiction has been sparse. In the most relevant case, *Gray Line National Tours Corporation* v. *United States,* 380 F. Supp. 263, 265-266 (S.D.N.Y. 1974), the court examined the legislative history of broker regulation:

> * * * As is well known, the sources of the Motor Carrier Act of 1935 were ICC's report on Coordination of Motor Transportation, 182 I.C.C. 263 (1932), and three reports of Commissioner Joseph B. Eastman in his capacity as Federal Coordinator of Transportation during the Great Depression, S. Doc. No. 119, 73d Cong. 2d Sess. (1934), S. Doc. No. 152, 73d Cong. 2d Sess. (1934), and H.R. Doc. No. 89, 74th Cong. 1st Sess. (1935). The ICC report took note of the brokerage problem, saying at 182 I.C.C. at 279-80:
>
> With the development of long-haul motor transportation of passengers there has grown up in many cities the practice of selling transportation by agencies which do not represent any regular bus line. The practices of these agencies have given rise to many of the complaints registered by interstate bus passengers. The agencies advertise rates appreciably less than the fares of regular bus

[1] Fitness is the most important concern when examining a broker application. See *Holiday International, Inc., Broker Application,* 128 M.C.C. 34, 40 (1977), and cases cited therein; and *Auch Inter-Borough Transit Co. Extension-22 States,* 88 M.C.C. 455, 459 (1961). In *Auch,* the Commission stated that in an application proceeding for special operations authority, protection against unwarranted economic competition would not be extended to the protestant broker.