

local officials. Therefore, consultation with State and local officials is not necessary.

#### Executive Order 13175

MARAD does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

#### Environmental Impact Statement

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions in section 4.05 of Maritime Administrative Order (MAO) 600-1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this final rule is required. This final rule involves administrative and procedural regulations that have no environmental impact.

#### Unfunded Mandates Reform Act of 1995

This final rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objective of the rule.

#### Paperwork Reduction Act

This rulemaking contains no new or amended information collection or recordkeeping requirements that have been approved or require approval by the Office of Management and Budget.

#### List of Subjects in 46 CFR Part 310

Federal Aid Programs, Reporting and recordkeeping requirements, Schools, and Seamen.

■ Accordingly, the interim final rule amending 46 CFR part 310 that was published in the **Federal Register** on June 8, 2004 (69 FR 31897), is adopted as a final rule with the following changes.

### PART 310—MERCHANT MARINE TRAINING

■ 1. The authority citation for part 310 continues to read as follows:

**Authority:** 46 App. U.S.C. 1295; 49 CFR 1.66.

■ 2. Amend § 310.7 by revising paragraph (b)(5) to read as follows:

**§ 310.7 Federal student subsistence allowances and student incentive payments.**

\* \* \* \* \*

(b) \* \* \*

(5) *Afloat employment year.* For purposes of the service obligation, a satisfactory year of afloat employment shall be the lesser of—

(i) 150 days; or

(ii) The number of days employed afloat that is at least equal to the median number of days of seafaring employment under articles achieved by deck or engine officers in the most recent calendar year for which statistics are available.

\* \* \* \* \*

■ 3. Revise § 310.12-1 to read as follows:

**§ 310.12-1 Form of Agreement.**

The form of agreement between the Maritime Administrator and schools for annual maintenance and support payments, Federal student subsistence and incentive payments and fuel assistance under the 1958 Act and the Act may be obtained from the Office of Policy and Plans, Maritime Administration, 400 7th St., SW., Washington, DC 20590.

■ 4. Amend § 310.58 by revising paragraph (b) to read as follows:

**§ 310.58 Service obligation for students executing or reexecuting contracts.**

\* \* \* \* \*

(b) *Service as a merchant marine officer.* For purposes of the service obligation set forth in paragraph (a)(5)(i) of this section, a satisfactory year of service on vessels in the United States merchant marine as a merchant marine officer shall be the lesser of—

(1) 150 days; or

(2) The number of days that is at least equal to the median number of days of seafaring employment under articles achieved by deck or engine officers in the most recent calendar year for which statistics are available.

\* \* \* \* \*

By Order of the Maritime Administrator.

Dated: May 12, 2005.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 05-9824 Filed 5-18-05; 8:45 am]

**BILLING CODE 4910-81-P**

### DEPARTMENT OF TRANSPORTATION

#### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Parts 192 and 195

[Docket No. RSPA-03-15852; Amdt. Nos. 192-100, 195-84]

RIN 2137-AD96

#### Pipeline Safety: Pipeline Operator Public Awareness Program

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This Final Rule amends the requirements for pipeline operators to develop and implement public awareness (also known as public education) programs. The changes are part of PHMSA's<sup>1</sup> Office of Pipeline Safety's (OPS) broad pipeline communications initiative to promote pipeline safety. Promoting pipeline safety requires enhanced communications (by pipeline operators) with the public to increase public awareness of pipeline operations and safety issues. The amendments for developing and implementing public awareness programs address the requirements of the Pipeline Safety Improvement Act (PSIA) of 2002<sup>2</sup> and incorporate by reference the guidelines provided in the American Petroleum Institute (API) Recommended Practice (RP) 1162, "Public Awareness Programs for Pipeline Operators."<sup>3</sup>

**DATES:** *Effective Date:* This final rule takes effect on June 20, 2005.

The incorporation by reference of API RP 1162 in this Final Rule was approved by Director of the Federal Register as of June 20, 2005.

**FOR FURTHER INFORMATION CONTACT:** Blaine Keener by phone at 202.366.0970, by mail at 400 7th St., SW., Room 2103, Washington, DC 20590, or by e-mail at [blaine.keener@dot.gov](mailto:blaine.keener@dot.gov).

<sup>1</sup> The Research and Special Programs Administration (RSPA) was recently renamed the Pipeline and Hazardous Materials Safety Administration (PHMSA). The history of this rulemaking includes references to both RSPA and PHMSA. For the purposes of this document, the terms are used interchangeably.

<sup>2</sup> Section 5 of the Pipeline Safety Improvement Act (PSIA) of 2002 (Pub. L. 107-55, 49 U.S.C. 60116, December 12, 2002).

<sup>3</sup> API RP 1162 provides guidance on development, implementation, and evaluation of pipeline operator "public awareness programs." Note that "public education programs," as used in this rule, and "public awareness programs," as used in API RP 1162, are considered to be the same and are used interchangeably.

**SUPPLEMENTARY INFORMATION:****I. Background**

This Final Rule concerns pipeline efforts to improve public awareness of pipeline operations and safety issues through enhanced communications with:

- The public (including residents and places of congregation, such as businesses, schools, hospitals, prisons, and other places where people gather) in the pipeline vicinity and its associated rights-of-way and pipeline facilities;

- State and local emergency response and planning officials (e.g., State and county emergency management agencies (EMAs) and local emergency planning committees (LEPCs)) and first responder organizations;

- Local public officials and governing councils of affected municipalities and school districts; and

- Excavators.

Effective public awareness programs are vital to continued safe pipeline operations. Such programs are an important factor in establishing communications with affected stakeholders, providing information necessary to enhance public awareness of pipelines, and communicating stakeholder roles relative to pipeline safety. Effective programs also can increase awareness and understanding of the important energy transportation role of pipelines, pipeline operations, associated public and environmental risks, and the preventive and mitigative steps taken to reduce those risks. Additionally, they can improve results in damage prevention, reduce encroachments on pipeline rights-of-way, improve pipeline safety and environmental performance, and enhance emergency response coordination.

This change in requirements for pipeline operator public awareness programs is part of PHMSA's broad effort to enhance safety by promoting improved public communications among the pipeline industry and government pipeline regulators. The promulgation of new requirements for pipeline operator public awareness programs also responds to provisions in the PSIA of 2002 calling for the Secretary of Transportation to issue standards prescribing the elements of an effective public education program.

*Statutory Considerations & Comments*

The statutory provision specific to public education is discussed elsewhere in this document. In general, OPS authority to issue safety standards to the design, construction, operation,

replacement, and maintenance of pipelines is found in 49 U.S.C. 60102(a). Pursuant to 49 U.S.C. 60102(b), a pipeline safety standard must be practicable and designed to meet the need for pipeline safety and for protection of the environment. In order to accomplish this, OPS must consider a number of factors in issuing a safety standard. These factors include the relevant available pipeline safety and environmental information, the appropriateness of the standard for the particular type of facility, the reasonableness of the standard, and reasonably identifiable or estimated costs and benefits.

OPS considered these factors in developing this rule and provides its analysis in the appropriate paragraphs of the preamble to this Final Rule. OPS also considered comments received from the public along with comments and recommendations of the Technical Pipeline Safety Standards Committee that are discussed below.

*Pipeline Safety Improvement Act of 2002*

On December 17, 2002, the President signed into law the PSIA of 2002. Section 5 mandates public education program activities by pipeline operators, the Secretary of Transportation, and appropriate State agencies. It requires owners or operators of a gas or hazardous liquid pipeline facility to carry out a continuing program to educate the public on:

- Use of a one-call notification system prior to excavation and other damage prevention activities;
- Possible hazards associated with unintended releases from the pipeline facility;
- Physical indications that such a release may have occurred;
- Steps that should be taken for public safety in the event of a pipeline release; and
- Procedures to report such an event.

Not later than 12 months after the date of enactment, each owner or operator of a gas or hazardous liquid pipeline facility was to review its existing public education program(s) for effectiveness and modify the program as necessary. The completed program was to include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations. It was to be submitted to the Secretary or, the appropriate State agency, and would be periodically reviewed. The Secretary was authorized to issue standards prescribing the elements of an effective public education program and to develop material for program use.

*Self-Assessment Forms*

To support pipeline operators in partially addressing the PSIA requirements, PHMSA prepared a self-assessment form for use in reviewing existing public education programs. The completed self-assessment aided and supported the operator in reviewing its program and in determining whether its adequacy and effectiveness in conveying the messages defined in the PSIA to the appropriate audiences. This assessment served as the basis for individual operators to define any necessary program improvements. The aggregate results of the self-assessments help PHMSA and the industry in identifying areas where operator programs overall are weak or in need of additional focus.

A draft self-assessment form was presented to attendees at two public workshops held during September 2003, in Houston, Texas and Baltimore, Maryland for comment. In November 2003, PHMSA issued an advisory bulletin<sup>4</sup> advising all pipeline operators to complete and return the self-assessment form by December 17, 2003 (the deadline prescribed in the PSIA). Aggregate results from those self-assessments may be viewed online at [http://primis.rspa.dot.gov/edu/RP1162/SA\\_Statistics\\_050704.pdf](http://primis.rspa.dot.gov/edu/RP1162/SA_Statistics_050704.pdf).

PHMSA is promulgating this Final Rule requiring operators to submit their completed programs to the Secretary of Transportation in fulfillment and implementation of PSIA's Section 5 requirements. In setting forth new requirements for pipeline operator public awareness programs, PHMSA is also responding to provisions in Paragraph C, AStandards," of Section 5 of the PSIA for the Secretary of Transportation to issue standards prescribing the elements of an effective public education program.

*Standards Committees Process*

PHMSA has two legislatively mandated technical advisory committees. The Natural Gas Pipeline Safety Act of 1968 required establishment of the Technical Pipeline Safety Standards Committee (TPSSC). The Hazardous Liquid Safety Act of 1979 required creation of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). The Committees' primary purpose is to review proposed pipeline safety standards for technical feasibility,

<sup>4</sup> 68 FR 66155, November 25, 2003, Pipeline Safety: Self-Assessment of Public Education Programs. This advisory bulletin may be viewed at <http://ops.dot.gov/whatsnew/AdvBulletinADB0308.pdf>.

reasonableness, cost-effectiveness, and practicability. The Committees also serve as a sounding board for discussing pipeline safety policy issues as well as legislative initiatives. Each group is composed of a balanced representation of Federal, State and local government agencies, the pipeline industry, and the public. In 2000, PHMSA (then known as the Research and Special Programs Administration (RSPA)), sponsored a pipeline communications exploratory group under its technical advisory committees. The groups met to explore the subject of pipeline communications and to identify opportunities for improvement. In December 2004, the two groups concurred with this rule's issuance.

#### *Communications Efforts*

PHMSA increased its efforts to communicate with the public regarding pipeline safety during several regulatory public meetings on Liquid and Gas Pipeline Integrity Management and Operator Qualification (see Docket Nos. RSPA-99-6355, RSPA-00-7408, and RSPA-00-7666). These efforts also included public meetings and public-access Web sites. These meetings provided opportunities for the public and other stakeholders to comment on the pipeline information needs of the public, local officials, and emergency responders.

PHMSA sponsored other public meetings to provide open forums for the exchange of pipeline safety information among PHMSA, community representatives, environmental organizations, first responders, city/county/state governments, and pipeline operators. Public stakeholders often expressed their desire to receive more specific information on pipeline communication initiatives.

Consequently, on January 29, 2003, PHMSA and the Washington State Utilities and Transportation Committee (WUTC) co-sponsored a public meeting on pipeline communications at the Bellevue Community College in Bellevue, WA. The meeting included panel discussions on current PHMSA initiatives, the development of API RP 1162, integrity management communications, and pipeline performance metrics. A meeting transcript and a copy of presentations can be found at [http://primis.rspa.dot.gov/comm/Bellevue\\_2003\\_01\\_29.htm](http://primis.rspa.dot.gov/comm/Bellevue_2003_01_29.htm).

PHMSA public communication initiatives include:

- Development of a public Web site for pipeline information (<http://primis.rspa.dot.gov/comm>);

- Creation of the Community Assistance and Technical Services (CATS) program and staffing new positions within each PHMSA Pipeline Safety regional office. CATS is an innovative program designed to meet the growing demand for enhanced stakeholder communications and to help facilitate permitting processes related to pipeline safety. The CATS mission is to advance public safety, environmental protection, and pipeline reliability by facilitating clear communications among all pipeline stakeholders, including the public, the operators, and government officials;

- Established a partnership with the National Association of State Fire Marshals (NASFM) to provide resources. This includes developing information and training aimed at enhancing the safety of first responders responding to pipeline accidents and of those assessing pipeline security risks. This collaboration will: assure that firefighters can safely respond to pipeline incidents; encourage NASFM members to join with the damage prevention community; encourage industry and local officials to ensure pipeline safety; educate the public on how to live safely near pipelines; improve pipeline awareness and improve security preparedness; and help with accident reporting and investigation for a better understanding of causes and consequences;

- In 2002, PHMSA asked the Transportation Research Board (TRB) of the National Academies to examine model land use practices by local communities, with an objective to develop guidance and enhance communications to better manage pipeline encroachment risks. The TRB was asked to: Examine evidence of risks to the public with increased development and population in proximity to pipelines; understand how these risks vary based on differences in product, pipeline characteristics, and other features; and explore the feasibility of establishing development setbacks that local governments might use in regulating encroaching development around existing pipelines. The TRB study was subsequently modified to address a PSIA requirement that PHMSA and the Federal Energy Regulatory Commission (FERC) conduct a study of population encroachment on pipeline rights-of-way. The results of the TRB study are published in TRB Special Report 281, "Transmission Pipelines and Land Use: A Risk-Informed Approach." PHMSA submitted an implementation plan to Congress on January 10, 2005; it

addresses the TRB recommendations made in SR 281;

- In 1988, the TRB published Special Report (SR) 219: Pipelines and Public Safety. It assessed the adequacy of measures used to protect the public near pipelines. TRB SR 219 examined land use adjacent to pipelines and methods that could be used to increase the public safety. PHMSA responded to recommendations for damage prevention, land use, and emergency preparedness measures designed to help reduce the risks due to pipeline accidents;

- In 1998, PHMSA initiated and sponsored a damage prevention practices study associated with existing one-call notification systems. The study responded to authorizations in the Transportation Equity Act for the 21st Century (TEA-21), signed into law on June 9, 1998. It examined damage prevention practices to determine which were most effective in protecting the public, excavators, and the environment, and preventing disruptions to public services and underground facilities. Results were reported in the landmark "Common Ground Study of One Call Systems and Damage Prevention Best Practices" in which 133 damage prevention Best Practices were identified; and

- Prior to passage of the PSIA of 2002, the pipeline industry began developing recommendations for pipeline operator public awareness programs, which resulted in establishing the API RP 1162, "Public Awareness Programs for Pipeline Operators." API developed RP 1162 with extensive collaboration with various segments of the pipeline industry along with input from PHMSA and State pipeline regulators. PHMSA aggressively promoted the development of API RP 1162.<sup>5</sup> PHMSA acknowledges the substantial work and collaboration that went into the development of API RP 1162 by incorporating it by reference into this rule.

#### *American Petroleum Institute Recommended Practice 1162*

In 2001, API began developing a new recommended practice for hazardous liquid pipeline operator public awareness programs. PHMSA recognized the potential to support the recommended practice its efforts to promote safety through improved public education and communications. At the request of, and with the support of PHMSA, API expanded the scope of the recommended practice to include gas transmission and distribution operators.

<sup>5</sup> A link to API RP 1162 on the API standards Web site is at <http://primis.rspa.dot.gov/edu/rp1162.htm>.

This was accomplished through formation of a multi-industry task force including representation from hazardous liquid, gas transmission, and gas distribution pipeline operators, as well as trade organizations representing the individual industry segments. Representatives of PHMSA and the National Association of Pipeline Safety Representatives (NAPSR) (representing State pipeline regulatory agencies) participated in meetings and provided input into both the development process and the content of the document known as API RP 1162. From the beginning of the process, PHMSA indicated to the task force and at public meetings that it would consider incorporating the guidance provided in RP 1162 within its planned rulemaking on operator public education programs.

The development of API RP 1162 complies with API Procedures for Standards Development, as approved by the American National Standards Institute (ANSI). More information on the development of RP 1162 and on API procedures can be found online at <http://committees.api.org/pipeline/standards/index.html>. Stakeholders had opportunities to provide comment during the document's development; this information is available in the docket.

Industry trade organizations representing pipeline operators generally agreed with the direction of PHMSA and the work of the API RP 1162 task force. In response, several trade organizations issued a Joint Statement on Enhancing Public Awareness Programs for the Pipeline Industry (May 28, 2003), which committed the industry to adopting “\* \* \* a consensus standard establishing a baseline public awareness program for pipeline operators \* \* \*” and urged PHMSA “\* \* \* to satisfy any need to supplement current requirements for public awareness programs by incorporating [API] RP 1162 into its regulations \* \* \*.” Executives from leading industry associations and organizations signed the joint statement.

#### *Notice of Proposed Rulemaking*

On June 24, 2004, PHMSA issued a Notice of Proposed Rulemaking (NPRM) with request for comment (68 FR 35279), with comment period closing on August 23, 2004. PHMSA proposed to require each operator of a hazardous liquid or gas pipeline to develop, implement, and maintain a public education program compliant with the requirements of API RP 1162. The proposal applied to all pipelines

regulated under 49 CFR Parts 192 and 195, including:

- Interstate and intrastate hazardous liquid transmission pipelines;
- Interstate and intrastate natural gas transmission pipelines;
- Natural gas distribution pipelines; and
- Oil and gas gathering lines.

PHMSA proposed that operators be required to develop and implement public awareness programs addressing specific stakeholder audiences. PHMSA noted that API RP 1162 provides program guidance for each audience regarding the types of messages to be delivered, the message delivery frequency, and the methods/media to deliver the message. API RP 1162 includes baseline program guidance applicable throughout the operator's pipeline system. It also includes supplemental guidance providing considerations to determine where, when, and how to enhance the baseline program to provide the appropriate level of public awareness outreach. Baseline and supplemental program recommendations for different pipeline operator types are summarized in a set of tables in API RP 1162. Additionally, the document provides that each operator establish and periodically update a written public education program covering all specified program elements.

#### **II. Comment Discussion**

In response to the NPRM, PHMSA received written comments from: Pipeline operator companies (21); pipeline industry trade associations (8); the Gas Pipeline Technical Committee (GPTC); third-party vendors to the pipeline industry (2); members of the public (7); and the Washington Utilities and Transportation Commission, a state pipeline safety regulatory agency.

Industry comments were received from: American Gas Association (AGA); American Petroleum Institute (API); American Association of Oil Pipelines (AOPL); American Public Gas Association (APGA); Atmos Energy; Burrton, KS, Municipal Gas Distribution (Jon Roberts); Columbia Gas Transmission Corporation; Duke Energy Field Services; Dynegy Midstream Services L.P.; El Paso Corporation; Enbridge Energy Company, Inc.; Gas Piping Technology Committee (GPTC); KeySpan Energy; Kinder Morgan Inc.; Michigan Consolidated Gas Company (MichCon); Nicor Gas; NiSource Energy Service Company; Paiute Pipeline (Southwest Gas Corporation); PECO; Peoples Gas Light and Coke Company; Pipeline Association for Public Awareness; PSEG Services Corporation;

Southern California Gas Company and San Diego Gas and Electric; Southern Union Co.; Southwest Gas Corporation; Sunoco Logistics Partners, L.P.; Texas Oil and Gas Association (TxOGA); Interstate Natural Gas Association of America (INGAA); Texas Pipeline Association; and Xcel Energy.

Third-party vendors to the pipeline industry submitting comments include Oleksa & Associates and Metrix Matrix Inc. Organizations and individuals representative of the public who submitted comments include: The Pipeline Safety Trust; the Washington State Citizens Committee on Pipeline Safety; and five individuals.

Commenters overall were supportive of the need for pipeline operators to conduct and manage effective public awareness/education programs, acknowledging that such programs were vital to the safe operation of oil and gas pipelines. Commenters were generally supportive of the proposal to incorporate API RP 1162 by reference into rule. However, some commenters opposed the proposed approach of incorporating API RP 1162 in toto as a regulatory requirement, as described in the NPRM. These along with many others offered particular comments or suggested alternatives. Some commenters considered that the proposed rule does not go far enough in requiring operators to provide specific other information that is outside the current scope of the proposed rule, or did not require a broad enough outreach to the general public.

The comments, discussed below, have been categorized as follows:

- A. Need for the Rule.
- B. Incorporation of API RP 1162 In Toto as a Regulatory Requirement.
- C. “Awareness” versus “Education”.
- D. Inspection, Enforcement, and Compliance.
  1. Inspection Program.
  2. Cooperative Efforts.
  3. Implementation.
  4. Evaluation Frequency.
  5. Submission Periods.
- E. Scope of the New Rule.
  1. Information Breadth.
  2. Rule Overlap.
  3. Emergency Response Plans.
- F. Resource Requirements.

#### *A. The Need for a Rule on Pipeline Operator Public Education Programs*

Several commenters opposed the adoption of API RP 1162 into a new rule based on the thought that there is no need for a new rule on public education at all. Two commenters stated that existing rules (49 CFR 192.614, 192.615, and 192.616) are adequate. One noted that those existing rules should be more

effectively enforced. Another commenter opposed the proposed rule since the PSIA of 2002 was "clear and unambiguous" and that requiring operators to have effective public awareness programs through further regulation would be counterproductive. This and other commenters noted that the PSIA does not require DOT to develop standards prescribing the elements of public education programs. Another commenter opposed incorporating API RP 1162 into regulations until it has a chance to mature as operators implement it into their procedures.

#### Response

PHMSA recognizes that operators should have existing public education programs under the current regulations requiring operators to conduct damage prevention programs (§ 192.614 and § 195.442), establish emergency plans and maintain liaison with emergency officials (§ 192.615 and § 195.402), and conduct public education programs (§ 192.616 and § 195.440). However, PHMSA considers that these current regulations are limited in scope and specificity. Additionally, the results of operator self-assessments and public meetings revealed that some operators do not have adequate public education programs and are in need of specific guidance to comply.

The broadened scope and added specificity provided in the guidance presented in API RP 1162 will be of significant benefit. Increased public awareness obtained through enhanced operator public education programs is expected to result in fewer pipeline accidents from third-party damage and improved emergency response if pipeline accidents do occur. On this basis, pipeline industry organizations have already endorsed the incorporation by reference of API RP 1162 into new regulatory requirements for pipeline operator public education programs.

Finally, the PSIA demonstrates Congressional intent and provides that DOT may issue standards prescribing elements of effective public education programs for pipeline operators. This rulemaking will assist operators in complying with Congressional mandates. PHMSA considers development and implementation of public education programs consistent with the guidance provided in API RP 1162 as enabling pipeline operators and regulators to evaluate operator programs for compliance and effectiveness. We believe the guidance will enable operators to determine where and how public awareness programs need to be modified to ensure their effectiveness.

#### B. Incorporation of API RP 1162 In Toto as a Regulatory Requirement

Eight commenters, including APGA, AGA, and GPTC, opposed the rule as proposed on the basis that API RP 1162 should not be incorporated in its entirety and its guidance and recommendations should not be translated into requirements. Eleven other commenters, including API, AOPL, and INGAA expressed their support for the proposed rule and support for PHMSA's intent to incorporate API RP 1162 by reference. However, these commenters also cautioned that the effort was not developed, nor was it intended, as a requirements document. They noted that PHMSA should clarify specifically what is required of operators and that API RP 1162 should be referenced as "Guidance material only."

These commenters noted that PHMSA should ensure that the flexibility afforded operators to develop and implement effective public awareness programs according to their needs and unique system parameters, as was intended in API RP 1162, is retained. Their comments address the perception that API RP 1162 is a recommended practice providing guidance affording an operator flexibility to develop an optimum public awareness program, through the use of enabling words such as "should," "might," "could," "may," and "can." They consider that such flexibility will be lost if RP 1162 is incorporated *in toto* into a rule. Concern exists that the guidance and recommendations would translate into requirements as those enabling words morph, through interpretation, into the prescriptive "shall."

More than one commenter noted they realized this perception in the NPRM preamble language which conveyed that the guidance of API RP 1162 was to become requirements to which operators must comply. At least three commenters quoted or paraphrased the preamble to the NPRM in support of this perception. The commenters noted that the NPRM stated: "The rule requires each pipeline operator to develop \* \* \* a public education program that complies with the requirements of API RP 1162 \* \* \*. API RP 1162 defines requirements \* \* \* including baseline requirements \* \* \* and supplemental requirements \* \* \*. Operators are required to consider\* \* \*." Multiple commenters noted that the proposed rule will make mandatory every guidance recommendation in API RP 1162 and that this will remove all flexibility for operators written into the practice and that will have a negative

impact on operator public awareness programs. Several commenters also noted that this will lead to confusion among operators and regulators alike about what is enforceable and what is not.

The APGA and the AGA both noted that PHMSA should reiterate its discussion published in 64 FR 15929, April 2, 1999, of how consensus standards, recommended practices, and publications are incorporated by reference. PHMSA considers that when an industry recommended practice is incorporated by reference into regulation, operators "would be expected to follow the provisions [of the recommended practice] unless the operator notes in the procedural manual the reasons why compliance with all or certain provisions is not necessary \* \* \*."

#### Response

PHMSA recognizes that adoption of recommended practices into regulation can cause some concern as the distinction between requirements and recommendations is not always clear. Under this rule, each operator is required to develop and implement a public awareness program consistent with the guidance provided in API RP 1162. The operator's program must include all applicable elements of API RP 1162 that are baseline, or the operator must document the rationale and justification for why those elements are not included in its program. The operator must also document consideration as to the supplemental elements of RP 1162 and provide the basis for program inclusion or exclusion of those elements. The Appendices to RP 1162 are intended to provide additional information, clarification, and examples relative to the guidance provided in the practice.

There is no intent that every occurrence of "should," "may," or "can" found in API RP 1162 be translated to "shall" as a result of incorporation of the practice by reference into the rule. As noted by APGA and AGA, PHMSA previously expressed<sup>6</sup> its position regarding operator consideration of practices that are incorporated into regulation by reference. The Final Rule is consistent with that position; operators will have to follow the provisions of the practice unless the operator notes in its procedural manual the reasons why compliance with all or certain provisions of the practice is circumstantially unnecessary.

<sup>6</sup>Reference 64 FR 15929, April 2, 1999.

In addition to developing public awareness programs reflecting consideration of the provisions of API RP 1162, under the PSIA of 2002, those operator programs shall specifically: Include provisions to educate the public on the use of a one-call notification system prior to excavation and other damage prevention activities; identify possible hazards associated with unintended releases from the pipeline facility; identify physical indications that such a release may have occurred; outline the steps that should be taken for public safety in the event of a pipeline release; and outline the steps on how to report such an event. The programs shall include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.

#### C. "Awareness" Versus "Education"

Several commenters suggested there was a distinction between public "awareness" as used in API RP 1162 and public "education" as used in the proposed rule. They proposed that PHMSA should clarify that the two terms refer to the same program obligation. One commenter said the use of 'awareness' is an "improvement over 'education' in that 'awareness' implies two-way communication instead of the one-way communication implied by 'education.'"

#### Response

PHMSA considers "public education programs," as used in the PSIA, and "public awareness programs," as used in API RP 1162, to address the same concept. The level of public awareness regarding pipeline operations and safety can be improved only through demonstratively effective education and communication programs.

#### D. Inspection, Enforcement, and Compliance

##### 1. Inspection Programs

Several commenters, including API, AOPL, Kinder-Morgan, and Enbridge, commented that PHMSA should consider using a centralized group to perform operator inspections and enforcement for the new rule rather than handling inspection and enforcement through separate field organizations. This, they noted, would allow PHMSA to designate and train a more specialized group of inspectors and would promote a more consistent approach in the interpretations of many aspects of API RP 1162 that are not prescriptive in nature. Some commenters used the analogy of PHMSA's integrity management

approach wherein teams composed of inspectors from across different regions were used to inspect operators against program criteria.

#### Response

PHMSA will develop criteria to evaluate operator public awareness programs against the requirements of this rule. The use of a standard set of criteria will facilitate consistent requirements interpretations and operator program evaluations.

PHMSA is considering the use of an approach wherein a third-party contractor would serve as a clearinghouse. The contractor would perform the initial reviews of operator programs against pre-defined criteria for completeness and minimal adequacy. This third-party review would utilize a checklist approach to identify if operator programs included all of the elements of a fully-developed program consistent with the rule and with the guidance provided in API RP 1162. The results of such third-party reviews would be used to identify where best to use PHMSA inspector resources in inspecting particular operator programs in further detail in the field. One PHMSA emphasis is on building effective programs; consideration is being given to having the third-party contractor work interactively with operators, where appropriate, to establish a more fully-developed program.

##### 2. Cooperative Efforts

Several commenters suggested PHMSA should provide clear direction to operators regarding the acceptability of cooperative or coalition efforts. These comments address the possibility that operators may want to join together cooperatively to achieve cost-effectiveness in outreach efforts along common rights-of-way or within geographic areas. Similarly, AGA and Southwest Gas Corporation noted that operators having transmission and distribution facilities within the same geographic area should have the flexibility to design either separate or common programs for those facilities. These comments pose the possibility that some operators may want to take advantage of surveys and evaluations performed by trade associations and others to demonstrate the effectiveness of their own outreach efforts.

#### Response

API RP 1162 provides general "baseline" program recommendations for the audiences, message content, and communication frequencies that operators should consider in the

development and implementation of their public awareness programs. It also provides supplemental guidance that should be considered for use in particular situations where it is appropriate to enhance the baseline program. It does not specify details of how each operator is to achieve effective public awareness nor does it attempt to suggest which approach would be most effective in all cases. Rather, API RP 1162 specifically notes that it does not take into consideration the unique attributes and characteristics of individual pipeline operators' pipelines and facilities. Neither is PHMSA, in incorporating API RP 1162 by reference into this rule, attempting to define the method or approach operators must use (or not use) to achieve effective programs.

Each operator must consider the unique characteristics of its pipelines and facilities, including their geographic location and proximity to other facilities. Operators must then determine the methods and approach that will achieve the best results in ensuring that educational outreach efforts reach those audiences that may be affected by, and should be aware of, the operator's facilities. Similarly, operators must choose the most appropriate methods for evaluating program effectiveness. As noted in Section 8.4.2 of API RP 1162, an operator may choose to participate in and use the results of surveys performed by others to evaluate the effectiveness of its program. The operator is cautioned that surveys performed by others must allow the operator to demonstrate results relevant to the operator's own facilities and public awareness program.

##### 3. Implementation

Several commenters noted that operators should be allowed from one to two years following publication of the Final Rule to develop and implement public education programs to meet the rule requirements. Some stated this time would be necessary for operators to ensure programs are fully compliant with the new regulation and to develop a schedule for implementation consistent with their annual budget cycles.

#### Response

Operators should have in place some level of existing public awareness/education programs under current regulations requiring operators to conduct damage prevention programs (§ 192.614 and § 195.442), to establish emergency plans and maintain liaison with emergency officials (§ 192.615 and § 195.402), and to conduct public

education programs (§ 192.616 and § 195.440). However, PHMSA recognizes that the additional efforts necessary to evaluate and further develop those programs, (consistent with this rule and the guidance provided in API RP 1162), and the efforts necessary to begin implementation of the enhanced programs, may take longer for some operators than others. Accordingly, operators must be prepared to submit for review their completed programs to the Secretary of Transportation or, in the case of an intrastate pipeline facility operator, the appropriate State agency, no later than 12 months following the publication date of the rule. As an exception, operators of small liquid propane distribution systems having less than 25 customers and master meter operators having less than 25 customers must be prepared to submit their completed programs to the appropriate regulatory agency for review no later than 24 months following the publication date of the rule. PHMSA encourages electronic submission of operator programs. Specific guidance regarding the exact timing and procedures for such submission will be provided in a future regulatory notice. Operator program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies.

#### 4. Evaluation Frequency

Several commenters noted that the rule should specify the frequency by which operators are required to evaluate their public awareness programs for effectiveness. The Washington Utilities and Transportation Commission (WUTC) considered that it is important in the early stages of implementing improved public education programs that operators conduct effectiveness reviews at least every two years, if not annually. WUTC noted that only by emphasizing results could the flexibility of the guidelines provided by API RP 1162 be retained while ensuring that operator programs are effectively reaching intended audiences. Others cautioned that it may be difficult for operators to draw a direct cause-and-effect relationship between enhanced public outreach and improved performance in damage prevention or emergency response. Some commented that it is important for operators to establish a baseline evaluation of their programs before making changes.

#### Response

PHMSA believes strongly that program evaluation is a key component for improving the effectiveness of

operator public education programs and for improving pipeline safety awareness. Prior to the development of the industry standard API RP 1162, pipeline operators were required by regulation to have ongoing public education programs. However, without periodic evaluations to determine if those programs are reaching the intended audiences and increasing audience awareness of the appropriate and necessary safety information, the impact and effectiveness of an operator's program cannot be determined. Performing evaluations of the programs and making necessary adjustments are the only ways to ensure implementation as designed and effectiveness in achieving intended goals. Effective programs will increase: Pipeline safety awareness; understanding of pipeline operations; associated public and environmental risks; and the preventive and mitigative steps needed and taken to reduce those risks. Benefits can include: improved results in damage prevention; reduced encroachments on pipeline rights-of-way; improved pipeline safety and environmental performance; and enhanced emergency response coordination.

PHMSA considers it important that operators perform and document an initial baseline evaluation of their programs to validate the operator's program. Based upon the results of the evaluation, operators should revise or update their program(s), determine the frequency of subsequent evaluations, and document the basis for determining the frequency of subsequent evaluations consistent with the guidance provided in API RP 1162.

#### 5. Submission Periods

Several commenters, including API, AOPL, Enbridge, and TxOGA, noted that operators should only be required to submit their public education programs to PHMSA one time. They felt that subsequent periodic submissions of operator programs or other related information and records should not be required, and that PHMSA should rely on its inspection program to evaluate continued operator compliance with the rule. Enbridge commented that "the review of programs, materials and documentation at an Operator's workplace is far more useful for OPS than submission by mail of written programs and materials. \* \* \* without interaction with the Operator \* \* \* it will not be possible to complete a robust assessment of a program." Enbridge noted that it conducts outreach along many thousands of miles of pipe, which requires more than a million mailings and hundreds of records of the contacts

with the target audience, and that periodic submissions of such information from all operators would be of no utility to PHMSA.

#### Response

Currently, PHMSA does not intend to periodically require operators to submit public awareness program documentation following the initial submission. However, if PHMSA believes an operator's program or its implementation is inadequate for safety, additional information may be required. Some state regulations may establish different requirements for submission of program material.

#### E. Scope of the New Rule

##### 1. Information Breadth

API, AOPL, and INGAA commented on the intent and breadth of information to be communicated to stakeholder audiences under API RP 1162 and this rule. They commented that RP 1162 is only part of a broader effort to enhance public communications. They emphasized that RP 1162 is intended to focus affected stakeholders on the presence of pipelines and facilities in their area and on recognizing and responding to emergency situations. The recommended practice was not intended to address sharing of data and information on topics such as: (1) Performance of operator's pipeline safety and integrity programs; (2) detailed mapping; (3) communication needs explicit to the siting of new pipelines; or (4) individual accident/incident response activities. Commenters believe that work on these topics will be better served with different approaches.

Others however, called for the proposed rule to include even broader requirements. Suggestions included having operators make available to the public plans and program documentation related to each operator's: integrity management program; testing, maintenance, and repairs; pipeline operating history; and education program evaluation results.

#### Response

This rule focuses on requirements for operators to establish and implement public awareness programs to provide outreach to a variety of audiences. The primary focus of these programs, as mandated in the PSIA and as qualified in API RP 1162, is to educate the public on: Use of a one-call notification system prior to excavation and other damage prevention activities; possible hazards associated with unintended releases from the pipeline facility; physical

indications that such a release may have occurred; steps that should be taken for public safety in the event of a pipeline release; and procedures to report such an event. These programs will also include activities to advise and increase the awareness by affected municipalities, school districts, businesses, and residents of pipeline facility locations.

There is no intent to include within the scope of the rule requirements pertaining to operators, any additional communications regarding new pipeline siting or construction, emergency communications necessary as a result of a pipeline accident, or operator performance results addressed through other means of communication or regulatory reporting.

## 2. Rule Overlap

PHMSA received several comments regarding the scope of this rule and API RP 1162 relative to similar requirements under current regulations that require operators to conduct damage prevention programs (§ 192.614 and § 195.442), establish emergency plans, maintain liaison with emergency officials (§ 192.615 and § 195.402), and conduct public education programs (§ 192.616 and § 195.440). Additionally, AGA, TxOGA and several gas transmission pipeline operators commented that PHMSA should acknowledge an overlap between this rule's requirements and the public communication requirements found in the gas integrity management rule, 49 CFR 192.911(m).

### Response

PHMSA recognizes that there is some overlap between this rule and the existing regulatory requirements cited in the comments, however, there is no conflict created by this rule's issuance. It requires operators to develop and implement improved public awareness programs consistent with the guidance provided in API RP 1162 and the requirements of the PSIA of 2002. Specific requirements for certain aspects of external communications by an operator are noted in the regulations cited in the comments. Those specific requirements may be enhanced by the guidance provided in API RP 1162. The existence of overlapping or similar requirements should not cause undue burden on any operator. In some cases, achieving compliance with one requirement may result in simultaneous compliance with another without the need for additional actions. Operators may already have or may develop integrated public awareness and external communication programs addressing compliance with all

requirements under a single umbrella. Demonstrating compliance will simply involve demonstrating where and how the operator's program addresses the various elements. The issuance of this rule on pipeline operator public awareness programs does not impact or provide any relief to operators regarding compliance deadlines previously imposed by the gas integrity management regulatory requirement in 49 CFR 192.911(m) or the imposed deadline referenced in 49 CFR 192.907.

## 3. Emergency Response Plans

Southwest Gas Corporation and its subsidiary Paiute Pipeline Company commented that API RP 1162 provides that "emergency preparedness response plans should be developed for use internally and externally with appropriate officials." They also noted that API RP 1162 indicates that "the operator should include information about how emergency officials can access the operator's emergency response plan." Southwest and Paiute questioned if the emergency response plan referred to in API RP 1162 is the same as required by 49 CFR 192.615 and, if so, is it PHMSA's intent for operators to provide emergency officials a copy of the their emergency response plans.

### Response

This rule on public awareness programs does not amend or change the requirements of § 192.615 Emergency Plans. Accordingly, operators are still required to establish and maintain liaison with appropriate emergency officials. Emergency liaison activities include communicating with officials regarding operator resources and actions during an emergency along with relating the emergency organization's capabilities and roles. There is no requirement within § 192.615 to provide emergency officials with copies of operator emergency response plans, especially not, as implied by the comments, for the purpose of non-operator persons assuming control of the pipeline system.

### F. Resource Requirements

Many commenters disagreed with PHMSA's conclusion that the costs to implement this rule would be minimal. They pointed out that, although most operators have public education programs, the incremental effort to implement API RP 1162 could be significant. In particular, commenters noted that polling public knowledge (as specified in Section 8 of the recommended practice), could be a significant cost. The Interstate Natural

Gas Association of America suggested that PHMSA recognize the value of operator cooperative evaluation and survey efforts. The Pipeline Association for Public Awareness also noted that cooperative efforts are one way to create efficiencies in reaching program goals.

### Response

Much of the concern involving costs centered on the misunderstanding that the rule would have made all provisions of API RP 1162 mandatory. As described elsewhere in this notice, that is not the case. The Final Rule requires that operators develop and implement public awareness programs, which many operators have already done. Operators will need to evaluate their programs against the recommendations in API RP 1162 to determine if changes are appropriate. Many operators, particularly the larger ones, have already performed such evaluations, have determined that program modifications are necessary, and have begun making changes to their programs.<sup>7</sup> Operators will retain flexibility in deciding which recommendations are appropriate for their programs. Operators will need to document, in their procedures, why other elements need not be implemented given their circumstances. PHMSA acknowledges that this evaluation process will require more than a "minimal" effort. Still, we expect that the effort should be relatively small on a per operator basis. There may also be some costs to implement program changes. These, too, are expected to be relatively small on a per operator basis, since many operators already have programs that are expected to incorporate many of the recommendations of RP 1162 and some have begun to make changes to their programs based on that guidance.

PHMSA does acknowledge that cooperative efforts can be an appropriate means of controlling the costs associated with surveying public knowledge of pipeline safety. Operators can conduct surveys on their own, or they may participate in broader cooperative efforts. Where a broader effort is used, each operator will be expected to document its conduct and how it relates to the specific operator's program and circumstances.

<sup>7</sup> Results of Operator Self-Assessments Required In Response to the Pipeline Safety Improvement Act of 2002 ([http://primis.rspa.dot.gov/edu/RP1162/SA\\_Statistics\\_050704.pdf](http://primis.rspa.dot.gov/edu/RP1162/SA_Statistics_050704.pdf)).

## Regulatory Analyses and Notices

### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

The Department of Transportation (DOT) does not consider this rule to be a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). This rule is considered non-significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). PHMSA prepared a Final Regulatory Evaluation for this rule and placed it in the public docket. The evaluation concludes that the RP 1162's adoption represents the most cost-effective alternative for implementing the public education provisions of PSIA 2002. Furthermore, PHMSA expects that the RP 1162's adoption will have a positive net benefit for pipeline operators, public safety, and the public environment. Most operators have existing public awareness programs, some of which may need to be expanded to meet the requirements of RP 1162. This is not expected to involve significant cost, as operators have flexibility in determining which provisions of the practice must be implemented in their programs. In addition to addressing the Congressional mandate, this rule increases public awareness obtained through the expansion of public education programs. It is expected to increase emergency response. Pipeline industry organizations endorsed the use of RP 1162 as the basis for pipeline operator public awareness/education programs.

### *Regulatory Flexibility Act*

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

PHMSA developed this rule in compliance with Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking) and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act. This ensures that the potential impacts of proposed rules on small entities are properly considered. The majority of gas transmission and hazardous liquid pipeline operators are large entities. Of the pipeline operators that are small entities, the majority are gas distribution operators.

Two trade associations represent natural gas distribution operators, The American Gas Association (AGA) and the American Public Gas Association (APGA). The APGA represents municipally-operated gas distribution

systems. Conversations between PHMSA and APGA indicate that there are approximately 950 municipally operated gas distribution operators. APGA represents 600 of these. Of these 600, APGA estimates that 550 of them would be classified as small entities. The APGA held two teleconferences for its members. PHMSA reported in the notice of proposed rulemaking that APGA indicated compliance with the provisions of this rule would not represent a significant impact on its members, because of the possibility of flexibility in implementing the standard's requirements. APGA indicated that it would be willing to help small pipeline operators comply with this regulation through training and development of model programs.

APGA submitted comments on the rule concluding it would have significant impact on its members and that PHMSA had failed to satisfy the requirements of the Regulatory Flexibility Act. APGA's comments indicated that their conclusion was based on the belief that the rule, as proposed, had removed the flexibility inherent in the recommended practice by converting all of its provisions to binding requirements. As explained elsewhere in this preamble, the Final Rule does not have that effect. The rule requires that operators develop and implement public awareness programs, and references API RP 1162, but does not make all the provisions in the recommended practice mandatory. Operators must consider each provision and they must either implement each, or include in their procedures a documented reason why the provision is not appropriate for their public awareness program(s). Thus, some level of documentation is required for each provision, demonstrating its consideration and the basis for not incorporating it (if applicable). However, operator programs need not include all elements of the standard. PHMSA concludes that the flexibility that was assumed to exist at the time that APGA made the statements referenced in the notice of proposed rulemaking is still inherent in this Final Rule.

Based upon the above information showing that the economic impact of this rule on small entities will be minimal, I certify under section 605 of the Regulatory Flexibility Act that this regulation will not have a significant impact on a substantial number of small entities.

### *Paperwork Reduction Act*

This rule contains some information collection requirements. As required by

the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), DOT will submit a copy of the Paperwork Reduction Act analysis to the Office of Management and Budget for its review and to the docket. The requirements for information collection include development by each pipeline operator of a written public awareness program in compliance with API RP 1162. In addition, API RP 1162 includes requirements for public awareness program documentation and recordkeeping. A pipeline industry group developed the standard which reflects industry practices for these aspects of operator programs. Some operators may have increased required levels of documentation and recordkeeping, but these are not expected to be significant. Therefore, PHMSA concludes that this rule contains a total of 517,480 hours of additional paperwork burden for the 22,500 hazardous liquid, natural gas transmission, natural gas distribution, and master meter systems operators. PHMSA estimated that on average, it will take an operator an additional 23 hours annually to meet the paperwork burden which includes development of public awareness plan as well as recordkeeping requirements, at a total cost of \$33.7 million.

### *Executive Order 13175*

PHMSA analyzed this rule under the principles and criteria contained in Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments). Because this rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

### *Executive Order 13132*

PHMSA analyzed this rule under the principles and criteria contained in Executive Order 13132 (Federalism). This 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. It should be noted that representatives of the National Association of Pipeline Safety Representatives (NAPSR), which

includes State pipeline safety regulators, participated extensively in the development and review of API RP 1162, which forms the basis for this rule.

Unfunded Mandates

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. An industry working group, along with participants from NAPSR, developed API RP 1162, which forms the basis for the rule. Industry organizations endorsed this approach to setting requirements for operator public awareness programs. PHMSA believes this to be the least burdensome alternative that achieves the rule's objective.

National Environmental Policy Act

PHMSA analyzed this rule for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et

seq.) and determined that this action will not have a significant impact on the environment. The Environmental Assessment of this rule is available for review in the docket.

Executive Order 13211

This rulemaking is not a "significant energy action" under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). It is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rulemaking has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

List of Subjects

49 CFR Part 192

Pipeline safety, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 195

Pipeline safety, Incorporation by reference, and Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA amends parts 192 and 195 of Title 49 of the Code of Federal Regulations as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

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

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, and 60118; and 49 CFR 1.53.

2. Section 192.7 is amended in the table in paragraph (c)(2) by adding a new item B.(5) to read as follows:

§ 192.7 Incorporation by reference.

*	*	*	*	*
(c)	*	*	*	
(2)	*	*	*	

Source and name of referenced material

49 CFR reference

B. * * *								
(5) API Recommended Practice 1162 "Public Awareness Programs for Pipeline Operators," First Edition (December 2003)								§ 192.616

3. Section 192.616 is revised to read as follows:

§ 192.616 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (IBR, see § 192.7).

(b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

(c) The operator must follow the general program recommendations of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

(d) The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons

engaged in excavation related activities on:

(1) Use of a one-call notification system prior to excavation and other damage prevention activities;

(2) Possible hazards associated with unintended releases from a gas pipeline facility;

(3) Physical indications that such a release may have occurred;

(4) Steps that should be taken for public safety in the event of a gas pipeline release; and

(5) Procedures for reporting such an event.

(e) The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.

(f) The program and the media used must be as comprehensive as necessary to reach all areas in which the operator transports gas.

(g) The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.

(h) Operators in existence on June 20, 2005, must have completed their written programs no later than June 20, 2006. As an exception, operators of small propane distribution systems having less than 25 customers and master meter operators having less than 25 customers must have completed development and documentation of their programs no later than June 20, 2007. Upon request, operators must submit their completed programs to PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate State agency.

(i) The operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies.

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

4. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60116, 60118; and 49 CFR 1.53.

5. Section 195.3 is amended in the table in paragraph (c) by redesignating items B.(13) through B.(16) as B.(14)

through B.(17) and adding a new item B.(13) to read as follows:

**§ 195.3 Material incorporated by reference.**

(c) \* \* \*

\* \* \* \* \*

Source and name of referenced material	49 CFR reference
B. * * * (13 API Recommended Practice 1162 "Public Awareness Programs for Pipeline Operators," First Edition (December 2003). ....	§ 195.440

■ 6. Section 195.440 is revised to read as follows:

**§ 195.440 Public awareness.**

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (IBR, see § 195.3).

(b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

(d) The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:

- (1) Use of a one-call notification system prior to excavation and other damage prevention activities;
- (2) Possible hazards associated with unintended releases from a hazardous liquid or carbon dioxide pipeline facility;
- (3) Physical indications that such a release may have occurred;
- (4) Steps that should be taken for public safety in the event of a hazardous liquid or carbon dioxide pipeline release; and
- (5) Procedures to report such an event.

(e) The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.

(f) The program and the media used must be as comprehensive as necessary to reach all areas in which the operator

transports hazardous liquid or carbon dioxide.

(g) The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.

(h) Operators in existence on June 20, 2005, must have completed their written programs no later than June 20, 2006. Upon request, operators must submit their completed programs to PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate State agency.

(i) The operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies.

Issued in Washington, DC, on May 5, 2005.

**Stacey L. Gerard,**  
*Acting Assistant Administrator/Chief Safety Officer, Pipeline and Hazardous Materials Safety Administration.*

[FR Doc. 05-9464 Filed 5-18-05; 8:45 am]

**BILLING CODE 4910-60-P**

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Parts 541, 543, and 545**

[Docket No. NHTSA-2005-21233]

RIN 2127-AJ51

**Federal Motor Vehicle Theft Prevention Standard**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** This final rule responds to petitions for reconsideration of the agency's newly expanded parts marking requirements. The Anti Car Theft Act of 1992 required NHTSA to conduct a rulemaking to extend the parts marking requirements to below median theft rate passenger cars and multipurpose

passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, unless the Attorney General found that such a requirement would not substantially inhibit chop shop operations and motor vehicle thefts. The Attorney General did not make such a finding. Accordingly, in a final rule published in April 2004, NHTSA extended parts marking requirements to these vehicles. This document responds to petitions for reconsideration of the April 2004 final rule. Specifically, we are amending our procedures in order to begin processing parts marking exemption petitions prior to the effective date, and we are phasing-in the new requirements over a two-year period.

**DATES:** The amendments to Sections 541.3, 543.3, and 543.5, which were published at 69 FR 17960, April 6, 2004, as amended by 69 FR 31412, June 22, 2004, are hereby withdrawn. Except for the amendment to Section 543.3, this final rule is effective September 1, 2006. The amendment to Section 543.3 is effective July 18, 2005. Voluntary compliance is permitted before that time. If you wish to submit a petition for reconsideration of this rule, your petition must be received by July 5, 2005.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For technical and policy issues, you may contact Mary Versailles, Office of International Policy, Fuel Economy and Consumer Programs, (Telephone: 202-366-2057) (Fax: 202-493-2290).  
*Mary.Versailles@nhtsa.dot.gov.*

For legal issues, you may contact George Feygin, Office of Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820).  
*George.Feygin@nhtsa.dot.gov.*

**SUPPLEMENTARY INFORMATION:**