

the proper amount of skill to be considered qualified? Are "refresher" courses needed?

(10) *Competency reviews.* In the event an incident or accident is attributed to error, how will the operator reevaluate and monitor an individual's qualification? How long should such a competency review take?

(11) *Recordkeeping.* How will qualification records be maintained? What sorts of qualification schedules (i.e.—training/testing results) must be maintained?

(12) *Compliance dates.* What time frame would be required for implementation of an operator's qualification program? When would personnel evaluation take place? Should time frames be consistent between large and small pipeline operators?

IV. Public Participation

RSPA invites comments on all issues, procedures, guidelines, interests, and suggested participants embodied in this NOI.

Issued in Washington, D.C. June 26, 1996.
Kelley S. Coyner,
Deputy Administrator.
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49 CFR Parts 192 and 195

[Docket No. PS-94; Notice 4]

RIN 2137-AB38

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA); Department of Transportation (DOT).

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document is to inform the public that RSPA is withdrawing the Notice of Proposed Rulemaking (NPRM) in Docket No. PS-94 titled "Qualification of Pipeline Personnel." RSPA is required by Congressional mandate to establish requirements on the qualification of personnel conducting certain tasks on a pipeline facility. The NPRM has been subject to considerable scrutiny from many commenters. However, RSPA believes that an alternative method of rulemaking can provide a better forum to establish communications between the interested parties and that a consensus may be achieved on a new rule on the qualification of pipeline personnel. RSPA is publishing elsewhere in this issue of the Federal Register a document titled "Notice of Intent to Form a Negotiated Rulemaking

Committee" that will provide a complete description of the regulatory alternative.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, (202) 366-2036, or Eben M. Wyman, (202) 366-0918, regarding the subject matter of this document; or the Dockets Unit, (202) 366-4453, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION: A NPRM titled "Qualification of Pipeline Personnel" was published on August 3, 1994 (Docket No. PS-94, Notice 2; 59 FR 39506). The NPRM proposed qualification standards for pipeline personnel who perform, or supervise persons performing, regulated operation, maintenance, and emergency-response functions. The intended effect of the NPRM was to improve pipeline safety by requiring operators to assure the competency of affected personnel through training, testing, and periodic refresher training. Following extensive interaction with the interested parties, this Notice withdraws that proposal from Docket No. PS-94. In light of the many concerns expressed by these parties, RSPA believes that an alternative to traditional rulemaking would be affective to reach consensus on an personnel qualifications rule. RSPA is planning to form a committee that will represent all affected parties to negotiate the many aspects of this issue, and to achieve consensus on a new NPRM to be published in the Federal Register. The following discussion of the written comments to the previous NPRM should be helpful in understanding the reasons for this withdrawal.

Discussion of Comments to NPRM and Development of Rules

RSPA received 131 comments to Docket No. PS-94, which expressed a wide variety of interests and concerns. Comments were received from 111 pipeline companies, 8 pipeline-related associations, 4 state and federal agencies, and 8 other interested parties. The following provides a summary of the commenters' issues.

Definitions

Comments were received on certain definitions in the NPRM. The definitions of "qualified administratively" and "supervisory persons" needed clarification, according to many commenters. Commenters alleged that the "qualified administratively" provisions would be redundant, because qualification in any manner would be sufficient, as long as the person was found proficient in

performing a covered job function or supervised by a qualified person. Also, commenters noted that the word "supervisor" might be inappropriate because the term can be indicative of a number of positions, including those located away from a job site. These commenters thought the term "supervisor" should be deleted and alternate terms, such as "qualified employee," "lead person," or another term should be used to describe someone who directly oversees personnel performing job functions covered in the NPRM.

Personnel to be Qualified

A number of commenters expressed concern about those who would be subject to this rule. The role of a persons' educational background and work experience in determining qualification was also addressed. Concern was also expressed over whether small gas systems operated by mobile home parks should be subject to a qualification rule. Also, the question of how the proposed rule would cover contractor personnel was the subject of many comments. Most commenters argued that contractors should be held accountable for their own qualification and recordkeeping, because it would be overly burdensome to require pipeline operators to maintain qualification records for contractor personnel. RSPA never proposed to require operators to be responsible for qualifying contractor personnel, only to ensure that they are in fact qualified. This issue is a prime example of why RSPA believes an alternative rulemaking method would provide a better channel of communication to resolve the controversy surrounding this regulatory initiative.

Evaluation and Scheduling

Another major issue was the evaluation of personnel and how past experience, education, and other factors would be considered in assessing qualification. Many comments stressed that the operator or the operator's designee would know the capabilities of their personnel and therefore be in the best position to evaluate and to ensure their qualification. RSPA believes the NPRM's intent was not far from this view, and that, with open communication, consensus can be reached among interested parties.

Qualification Training

The NPRM listed training that would be required if an employee was found to be not qualified. This issue generated many written comments. The commenters alleged that the language in

this section was too prescriptive. Rather than list training requirements, many commenters asserted that RSPA should broaden the scope of the NPRM to cover safety related tasks and allow the operator to decide what those tasks are, who is presently qualified to perform them, and how other persons should obtain that qualification.

Qualification Testing

The comments on this issue were generally consistent with those on training. Specifically, commenters said the situations in which testing is needed to qualify a person and the methods of qualification should be left to the operator's discretion.

Refresher Training/Competency Reviews

RSPA received many comments calling for either revision or deletion of these sections. Commenters stated that requirements for refresher training would be unnecessary and overly burdensome, because many day-to-day

tasks would not require a "refresher" in order to be safely performed. Moreover, they said the proposed requirement for a competency review was too prescriptive, and that the language in the NPRM did not indicate the scope of competency reviews. RSPA believes that the scope and methods of review, after an incident occurs due to performance of covered functions, can be properly addressed in an alternative rulemaking process.

Other Issues

Commenters expressed their views on other aspects of the NPRM, such as the proposed recordkeeping requirements. The concept of operator discretion was again the focus of these comments. Commenters felt that as long as proper records are kept and made available upon request, the methods of recordkeeping should be left to those that keep the records. In addition, many commenters suggested that RSPA

lengthen the dates for compliance with the NPRM. Finally, a large number of commenters said the costs to comply with the NPRM would far exceed the benefits of the proposal. This was one of the most prevalent comments received.

Negotiated Rulemaking

As previously stated, RSPA is publishing elsewhere in this issue of the Federal Register a document titled Notice of Intent to form a *Negotiated Rulemaking Committee* to conduct a negotiated rulemaking as an alternative to the traditional rulemaking process for this regulatory action. RSPA believes these issues can be expeditiously resolved in a negotiated setting.

Issued in Washington, DC, on June 25, 1996.

Richard B. Felder,
Associate Administrator for Pipeline Safety.
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