

Federal requirement	FR reference	FR promul-gation date	State authority
			335-14-9-.04(1)(2)(3)(4) 335-14-8-.04(3)(a)2

Alabama's applications for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Alabama is granted final authorization to operate its hazardous waste program as revised.

Alabama now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Alabama also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Alabama's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: August 4, 1995.
John H. Hankinson, Jr.,
Regional Administrator.
[FR Doc. 95-20009 Filed 8-11-95; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192
[Docket PS-135; Amdt. 192-3]
RIN 2137-AC32

Customer-Owned Service Lines

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

SUMMARY: This action requires operators of gas service lines who do not maintain buried customer piping up to building walls or certain other locations to notify their customers of the need to maintain that piping. Congress directed DOT to take this action in view of service line accidents. By advising customers of the need to maintain their buried gas piping, the notices may reduce the risk of further accidents.

EFFECTIVE DATE: September 13, 1995.
FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202) 366-2392, regarding the content of this document, or the Dockets Unit (202) 366-4453 for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

A. Customer Piping

RSPA's gas pipeline safety standards (49 CFR Part 192) apply to the distribution of gas up to the end of a pipeline operator's service line. A service line, as defined in § 192.3, is a distribution line that begins at a common source of supply, usually a main, transmission line, or gathering line. The end of a service line is a customer meter or a connection to a customer's piping, whichever is farther downstream. If there is no meter, the connection to a customer's piping marks the end of a service line. A customer is any person who contracts with an operator to receive gas for consumption.

Customer's piping (or customer piping) refers to piping not owned by an operator through which a customer receives gas.

When operators install customer meters, they usually install them outdoors next to the building that houses the customer's principal gas utilization equipment. If that equipment is not inside a building, the meter may be installed next to the equipment. Either of these installations may leave only a short segment of exterior customer piping between the end of the operator's service line and the building or equipment. Sometimes, however, operators install customer meters farther away from buildings or equipment, perhaps at a private property line or fence. The result is a much longer length of exterior customer piping.

Regardless of length, customer piping downstream from an operator's service line is not subject to the maintenance standards of Part 192. However, according to the National Transportation Safety Board, twenty-two states now require operators to monitor portions of customer piping. Also, many operators voluntarily maintain customer piping up to building walls. Still, for much customer piping, maintenance is the responsibility of customers or piping owners, not operators of service lines. In this regard, RSPA is preparing a report on the safety of customer piping located downstream from service lines to see if there is a need for further legislative or regulatory action. The report is required by section 115(b) of the Pipeline Safety Act of 1992 (Pub. L. 102-508; 106 Stat. 3296).

B. Statutory Mandate

During a 7-month period beginning September 16, 1988, a series of five service line accidents killed four people and injured 16 others in Kansas and Missouri. The accidents happened on service lines supplying gas to homes and were due to corrosion and other causes. As a result, Congress became concerned about the safety of gas piping leading up to buildings. Congress felt that customers of distribution pipeline operators may not understand the need for basic maintenance of customer piping.

Therefore, as provided by 49 U.S.C. § 60113(a) (formerly section 18(b) of the

Natural Gas Pipeline Safety Act of 1968), Congress directed DOT to—

Prescribe regulations requiring an operator of a natural gas distribution pipeline that does not maintain customer-owned natural gas service lines up to the building walls to advise its customers of—

- (1) the requirements for maintaining those lines;
- (2) any resources known to the operator that could assist customers in carrying out the maintenance;
- (3) information the operator has on operating and maintaining its lines that could assist customers; and
- (4) the potential hazards of not maintaining the lines.

C. Rulemaking Proposal

In response to this Congressional mandate, RSPA published a notice of proposed rulemaking (NPRM) (59 FR 5168; February 3, 1994) on customer notification. The NPRM proposed to define the piping covered by the mandate ("covered piping"). The NPRM also proposed to establish the details of advice that operators who do not maintain covered piping up to building walls would have to give their customers.

In a supplemental notice of proposed rulemaking (SNPRM) (59 FR 13300; March 21, 1994), RSPA expanded the proposed rules to cover certain exterior customer piping that is above ground. The SNPRM also clarified that the proposed rules were not limited to operators who are local distribution companies. Other operators (primarily transmission companies) that supply gas to customers through service lines were covered as well. RSPA also announced in the SNPRM that the proposed rules did not apply to customer piping that branches from a customer's primary gas supply line to supply gas to secondary equipment, such as pool heaters and yard lanterns.

D. Advisory Committee Review

RSPA presented the NPRM and SNPRM for deliberation by the Technical Pipeline Safety Standards Committee (TPSSC) at a meeting in Washington, D.C. on May 11, 1994. TPSSC is RSPA's statutory advisory committee for gas pipeline safety. The committee comprises 15 members, representing industry, government, and the public, who are technically qualified to evaluate gas pipeline safety. TPSSC's report of its deliberation is available in the docket of this proceeding.

TPSSC voted unanimously to find the proposed rules technically feasible, reasonable, and practicable, provided RSPA made the following changes: (1) delete information on age, location, and material of customer piping from

proposed § 192.16(a)(4); (2) when customer piping does not enter a building, end covered piping at the point of custody transfer; (3) apply the proposed rule only to buried residential and small-commercial lines; and (4) delete "transmission or" from proposed § 192.16(a) to limit the rule to distribution operators. The next section discusses how we handled TPSSC's recommended changes in developing the final rule.

II. Discussion of Comments and TPSSC Recommendations

A. Commenters

We received written comments from 57 persons in response to the NPRM and SNPRM. The comments came from: 47 pipeline operators; 5 state pipeline safety agencies (Maryland, Kansas, Iowa, Michigan, and Missouri); 4 trade associations (American Gas Association (AGA), Interstate Natural Gas Association of America (INGAA), Western Mobilehome Parkowners Association (WMPA), and Texas Gas Association (TGA)); and 1 federal agency (National Transportation Safety Board (NTSB)).

Most commenters directed their remarks to specific issues. This section of the preamble discusses our resolution of significant issues in light of comments and TPSSC recommendations.

B. The Term "Customer-Owned Service Line"

The mandate applied to customer piping Congress called "customer-owned service lines." So the NPRM and SNPRM used this term to designate the customer piping covered by the proposed rules.

Despite its statutory origin, many commenters felt the term "customer-owned service line" would be confusing in a Part 192 regulation. They said many service lines under Part 192 include piping owned by customers. Consequently, they argued the term was too similar to "service line" to distinguish customer piping not regulated by Part 192 from service lines regulated by Part 192. The commenters suggested as alternatives the names "supply pipe," "yard line," "fuel line," and "customer-owned piping."

We agree that "customer-owned service line" would be a misnomer in Part 192. The term could easily be confused with "service line," because some customers own the portion of a service line on private property between a distribution main and customer meter. Also, other customers (particularly tenants) may not own any of the piping

through which they receive gas from an operator. For these reasons, we did not use the term "customer-owned service line" in the final rule.

At the same time, we did not name covered piping as commenters suggested. Since Part 192 currently refers to piping beyond the end of a service line as "customer's piping" (see § 192.3, service line), referring to that piping by another name would be confusing. Instead, to designate piping covered by the final rule, we used "customer's piping" with other descriptive wording (§ 192.16(a)).

C. End of Covered Piping

To delineate the customer piping covered by the proposed rules, the NPRM and SNPRM defined the term "customer-owned service line." The definition proposed was: "a pipeline that transports natural gas or petroleum gas from a service line to (1) an exterior wall of a building, or (2) end-use equipment" (proposed amendment to § 192.3).

Most commenters thought the proposed end of covered piping was unclear. One concern was the end of covered piping when customer piping leads to more than one building. Another concern was the end when customer piping leads both to a building and to outdoor equipment, such as a lantern. Still another concern was the end when customer piping does not enter a building, which happens at some plants. In regard to plants, AGA argued the end should be at a location equivalent to a building wall, such as the plant fence or point of custody transfer. Similarly, TPSSC recommended ending covered piping at a custody transfer point when there is no building.

As stated above, we intended the proposed rules to apply to customers' primary gas supply lines. Branch lines that serve pool heaters, yard lanterns, or other types of secondary equipment were not intended to be covered. The final rule (§ 192.16(a)) clarifies this point by covering customer piping up to gas utilization equipment only when the customer's piping does not enter a building. Also, to avoid the confusion of where covered piping ends when customer piping enters more than one building, the final rule refers to the first building. We used the term "gas utilization equipment" instead of "end-use equipment" for consistency with present terminology in Part 192 (e.g., § 192.197(a)(5)).

When customer piping does not enter a building, we agree that a perimeter fence (or wall) surrounding the gas utilization equipment serves the

purpose of a building wall under the mandate. Thus, when there is no building, under the final rule, covered piping ends at the gas utilization equipment or at the intersection of the first fence (or wall) that encloses the equipment (if such a fence (or wall) exists). The fence (or wall) may surround the plant, part of the plant, or just the equipment.

We did not adopt custody transfer to demarcate the end of covered piping when customer piping does not enter a building. Because custody transfer arguably occurs when gas enters piping not owned by the operator, none of the customer piping downstream from a service line would come under the notification rule.

D. Aboveground Customer Piping and Short Sections of Piping Between Meters and Buildings

Many commenters, including AGA and Missouri, recommended that the final rule apply only to buried piping. Generally, the commenters felt that aboveground piping presents less risk than buried piping. The commenters said operators or customers would see any deteriorated piping or they would smell any leaks. Further, the commenters envisioned that any leaks would go directly to the atmosphere and not migrate into a building. TPSSC also recommended that we limit the final rule to buried piping.

The chief reason, however, that most commenters wanted to restrict the final rule to buried piping was to reduce the number of customers that would have to be notified. This point was emphasized by AGA at the TPSSC meeting, convincing TPSSC to overturn an earlier vote against excluding aboveground piping. Millions of additional customers would have to be notified if aboveground piping were covered, since most service lines, including lines that end at meters next to buildings, connect to short sections of aboveground piping. For example, one operator said it would have to send 1.3 million notices if the rule covered aboveground piping, compared with 68,000 notices if only buried piping were covered. This operator argued that since the accidents that produced the mandate all involved buried piping, Congress did not intend the mandate to cover aboveground piping. In addition, according to WMPA, if the rule covered aboveground short sections of piping, it would affect most of the 2,950 mobilehome parks in California with master meter systems. WMPA said mobilehomes in these parks are usually connected to gas meters by short flexible pipe that is the responsibility of the mobilehome owner.

WMPA recommended that the final rule not apply to aboveground piping less than 6 feet long.

We too were concerned about the impact of the proposed rules on short sections of piping between customer meters and buildings. So, in the NPRM and SNPRM, we asked for public comment on whether these short sections of piping are properly installed and periodically maintained. One operator commented that trained operator or heating contractor personnel install the short sections. Another operator said installation is done according to the National Fuel Gas Code, interior gas piping standards produced by the American National Standards Institute and the National Fire Protection Association. Several operators said that short sections seldom or never leak. A few operators reported they periodically inspect short sections for leaks and advise customers of any problems. However, one operator said it does not check commercial or industrial piping. Two other operators said they check for leaks when they turn gas on or when they receive leak reports. WMPA commented that leak surveys normally include the customer's connector pipe, and that mobilehome owners are advised of any needed repairs.

These comments and the TPSSC recommendation convinced us that aboveground customer piping should not be regarded as covered piping. First of all, we recognize that if aboveground piping were covered, almost every gas customer in the U.S. would have to be notified. And there is no evidence that a notification program of this magnitude would result in a comparable increase in public safety. Nor do we think Congress contemplated a huge, nationwide notification program. Although the mandate arguably applies to any customer piping up to building walls, the fact that the accidents that led to the mandate happened on buried service lines means it is reasonable to conclude that Congress intended the mandate to cover only buried customer piping. This conclusion is congruous with the risks involved, because as the comments indicate, aboveground customer piping poses much less risk than buried customer piping. Therefore, the final rule applies only to buried piping (§ 192.16(a)). As a result, short sections of customer piping between customer meters and building walls that are entirely aboveground are not covered by the final rule.

E. Farm Taps and Industrial Taps

The proposed rules applied to customers served by "farm taps" or

"industrial taps." Farm tap is industry jargon for a pipeline that branches from a transmission or gathering line to deliver gas to a farmer or other landowner. Similarly, an industrial tap is a pipeline that branches from a transmission or gathering line to deliver gas to an industrial plant. So companies primarily engaged in the transmission or gathering of gas operate most farm taps and industrial taps.

About a third of commenters argued against this proposal, saying that Congress intended the mandate to apply only to local distribution companies. In support, they pointed out that residential accidents prompted the mandate. They also said that customers served by farm and industrial taps are more likely than residential customers to be familiar with the need to maintain gas piping. In this regard, a gas production company said its lease agreements with farm tap customers make them aware of their responsibility for maintenance. TPSSC also recommended that we limit the final rule to distribution operators and to residential and small commercial customers.

We do not believe these arguments and TPSSC recommendations justify excluding farm tap and industrial tap customers from the final rule. To begin with, while we recognize that Congress was primarily concerned about residential customers, the mandate is not so limited. Congress applied the mandate to "operators of natural gas distribution pipelines." But these operators are not just local distribution companies as the commenters suggested. Some operators primarily engaged in the gathering or transmission of gas also operate distribution pipelines. They do so when they deliver gas directly to customers through farm taps and industrial taps. In fact, because portions of these delivery lines qualify as service lines, gathering and transmission operators report them as distribution pipelines under 49 CFR 191.13. Moreover, farm and industrial tap customers are not immune from harm by potential hazards that could occur on their piping. And surely not all farm and industrial tap customers know enough about gas piping safety to make even a single maintenance notice unnecessary.

Therefore, application of the final rule does not depend on the nature of an operator's primary business. To clarify this point, we reworded the final rule (§ 192.16(a)) so that it applies to operators of service lines, instead of transmission or distribution operators as proposed. Although this change made it unnecessary to define "farm tap" or

“industrial tap,” operators of these taps are not excepted from the final rule.

We recognize that local distribution companies operate some metered farm taps on transmission lines. In these cases, the local distribution company is responsible for compliance with the final rule.

F. Meaning of “Maintain”

The mandate applies to operators who do not “maintain” customer piping up to building walls. What Congress meant by “maintain” is important, because operators who maintain customer piping up to building walls need not advise customers of the need for maintenance. Because “maintain” is inexact, the NPRM and SNPRM proposed to clarify the mandate by giving “maintain” a particular meaning: “maintain * * * to Part 192 standards” (proposed § 192.16(a)).

Commenters thought the standards in Part 192 were not an appropriate gauge of whether an operator maintains covered piping as Congress had in mind. One operator put it this way: while it may be reasonable to conduct a leakage survey every 3 years (under § 192.723) up to the nearest building wall and, if a leak is detected, shut off the flow of gas, it would not be reasonable to maintain a customer’s piping to meet all Part 192 maintenance standards. Another operator thought the proposal was unreasonable because it would require operators to send notices to customers even if operators maintain covered piping according to State requirements, but not to Part 192.

RSPA agrees that operators would have difficulty meeting Part 192 maintenance standards on covered piping. Operators may lack permission from property owners to take maintenance action or lack the necessary information upon which to base maintenance action. For example, under § 192.725, each disconnected service line must be pressure tested as a new line. Yet operators probably would need access to the customer’s building and other permission from the customer or property owner to do this test on a customer’s piping. Another example is § 192.455(a), which provides that each buried pipeline installed after July 31, 1971, must be protected against external corrosion. This regulation presumes operators know the installation date of their pipelines, a fact they may not know for a customer’s piping.

Upon further consideration, we are defining “maintain” to mean whatever maintenance is reasonable for operators to do on covered piping, considering the Congressional intent. Although the

legislative history casts little light on what Congress meant by “maintain,” it does show that Congress was concerned about corrosion-related accidents on service lines.

Preventing and correcting hazardous leaks are the major safety reasons to maintain gas pipelines. The comments show that many operators already check customer piping between customer meters and building walls for leaks. Some operators may check for leaks while doing routine leakage surveys on their own pipelines under § 192.723. If a leak is found, depending on the nature of the leak, they either shut off the flow of gas or warn the customer to repair the leak.

Besides leakage checks, another reasonable maintenance activity is to monitor customer piping for corrosion, a major cause of leaks on metallic pipelines. More specifically, operators must periodically monitor their buried metallic service lines for external corrosion under § 192.465. With permission from the land owner or tenant, operators could also monitor covered piping according to this standard. However, rather than take the specified remedial action, which might be difficult to do on covered piping, they could shut off the flow of gas or warn the customer to repair any harmful corrosion found.

Considering the reasons for maintenance, Congress’s concern about corrosion, present industry practices, and commenters’ advice, we believe “maintain” means periodic checking for leaks and corrosion, with appropriate follow-up action. Thus, the final rule (§ 192.16(a)) provides that operators who do not maintain covered piping according to § 192.465 (if applicable) and § 192.723, with appropriate remedial action, must send the customer a maintenance notice.

In accordance with Executive Order 12898 on Environmental Justice, we have considered the potential effect of this final rule on minority and low income customers. Because the rule applies only to gas operators who do not inspect certain customer piping, the rule will not impose direct costs on gas customers. However, some customers may incur indirect costs of the rule. Customers who own exterior gas piping and decide to heed the gas company’s maintenance advice could face large repair bills, depending on the condition and amount of their piping. Indirect costs can also arise when operators who inspect customer-owned piping discover that it is leaking or otherwise unsafe and require customers to repair the piping if gas service is to continue.

We cannot predict which customers would be likely to incur these indirect costs. However, the proportion of minority and low income customers that might incur them should be small, because most minority and low income gas customers are tenants. As tenants, they can reasonably be expected to refer the matter of piping maintenance or unsafe piping to their landlords, who are responsible for corrective action.

When minority and low income customers must bear the indirect costs themselves, voluntary organizations and local welfare agencies can reasonably be expected to provide assistance, especially in response to gas shut off situations if the health of customers is affected. In addition, we expect that states adopting this final rule will monitor its effect on minority and low income gas customers and find additional ways to lessen the indirect cost burden. For example, states may require operators to stand the cost of maintenance or establish a fund to pay for maintenance that minority and low-income customers cannot afford.

Despite the potentially low impact of this final rule on minority and low income customers as a whole and efforts to defray indirect costs, the cost of piping maintenance will unavoidably be a hardship for some minority and low income customers. Still, in view of the high safety risk of deteriorating residential gas piping and Congress’s mandate that operators warn customers about this potential problem, we see no federal regulatory alternative that would lessen the potential cost burden. We will, however, examine this issue further in the report to Congress on the safety of customer-owned service lines that is required by section 115(b) of the Pipeline Safety Act of 1992 (Public Law 102-508, 106 Stat. 3296).

G. Customer Responsibility

The NPRM and SNPRM proposed that operators who do not maintain covered piping must notify the customer that “the customer owns and is responsible for the maintenance of the customer-owned service line” (proposed § 192.16(a)(1)). The purpose of this proposal was to alert customers that the operator does not maintain the customer’s piping.

AGA and several operators pointed out that customers who occupy rental properties, especially commercial buildings, may not own the piping through which they receive gas. Other commenters observed that operators may not know who owns the customer’s piping. One solution a commenter suggested was that the notice advise

rental customers to refer the maintenance advice to the landlord.

Another consideration, not raised by commenters, is that many states now require operators to do some maintenance on customer piping. In these states, it would be incorrect for operators to notify customers that the customers or their landlords are responsible for maintenance of customer piping.

Thus, it appears the proposal could be confusing or incorrect in some circumstances if included in maintenance notices. To avoid this confusion, the final rule (§ 192.16(b)(1)) merely requires operators to notify customers that the operator does not maintain the customer's piping.

Some operators may do a level of maintenance on customer piping (either voluntarily or under State law) that does not reach the minimum level prescribed by the final rule. If these operators wish to avoid advising customers that they do not maintain customer piping, they would have to increase their maintenance to the minimum level.

H. Requirements for Maintenance

Under the mandate, operators who do not maintain covered piping must advise their customers of the requirements for maintenance of that piping. To carry out this feature of the mandate, the NPRM and SNPRM proposed that operators notify customers "of the essential elements for proper maintenance * * * such as those listed in subpart M of [Part 192] or those listed in applicable local building codes" (proposed § 192.16(a)(2)).

Many commenters, including Iowa, Michigan, AGA, and TGA, recommended that the final rule not refer to Part 192 or local codes as examples of the essential elements of maintenance. The objection expressed most often was that Subpart M of Part 192 is not appropriate for customer piping downstream from meters; it was written for operators, not customers. Commenters also said the proposed rule was indefinite about which sections in Subpart M to apply to customer piping. Several commenters said that Subpart M and the local codes may conflict with each other, forcing operators to choose which standard is appropriate for customers to follow. One commenter stated it would be unreasonable to require operators to learn the essential elements of local building codes applicable to maintenance of customer piping and then send that information to each customer. For example, one large distribution company said it would be especially burdensome to examine the details of local codes in the

535 cities, towns, and communities it serves, and to continually keep abreast of them.

Alternatively, INGAA and an operator suggested that the final rule specify the maintenance advice operators are to give customers, instead of leaving it to the operator's discretion. INGAA said this approach would minimize the potential liability for giving inappropriate advice. The operator said it would reduce the confusion of different operators giving different advice to similar customers. Two operators thought we should limit the maintenance advice to periodic leakage surveys. Also, two other operators advised us to mention corrosion control as an example of essential maintenance.

We believe Congress used the word "requirements" in the sense of actions that are necessary for maintenance, rather than required by law for maintenance. So we proposed that operators use local codes, Subpart M of Part 192, or other sources as a guide to identify essential elements of maintenance. Although many commenters interpreted the proposal to the contrary, we did not intend for operators to keep abreast of local code requirements applicable to maintenance of customer piping. Nor did we intend for notifications to bring customers up to date about their obligations under local law.

We recognize, though, that the proposed rules gave operators wide latitude to decide what maintenance advice to provide customers. We also recognize that confusion could result if operators gave different advice in similar situations. So we adopted the suggestion to specify essential maintenance advice. We based the specified maintenance advice on the recommendations of commenters and the decision discussed above on the meaning of "maintain." Since the specified maintenance advice is commonly found in pipeline safety programs, we doubt it conflicts with local codes.

Consequently, the final rule (§ 192.16(b)(3)(i)-(iii)) does not require notice of any provisions of Subpart M of Part 192 or of any local code requirements. It simply requires operators to notify customers that their buried gas piping should be periodically inspected for leaks; periodically inspected for corrosion, if the piping is metallic; and repaired if any unsafe condition is found. By referring to buried piping, the notice will encourage customers to apply the advice to any buried piping they may have besides their primary supply line.

I. Maintenance Assistance

The mandate requires that operators advise customers of any resources known to the operator that could assist customers in carrying out maintenance. In response, we proposed that operators notify customers "of available resources that could aid the customer in obtaining maintenance assistance, such as the gas pipeline operator, the state licensing board for plumbers and state plumbers' associations, Federal and state gas pipeline safety organizations, the local building code agencies, and appropriate leak detection, gas utility, and corrosion protection contractors" (proposed § 192.16(a)(3)).

Many commenters said it would be too burdensome to maintain current lists of agencies, associations, and contractors over wide areas. They said customers could easily find maintenance assistance by consulting the local better business bureau or chamber of commerce. A few commenters were concerned the proposed rule would cause suits to be filed against the operator for unfair competition if notices omitted appropriate contractors, or for negligence if recommended contractors caused injuries or did unsatisfactory work. One commenter thought the proposed rule was unfair because it would force operators to refer customers to businesses that compete with the operators to provide maintenance services on gas piping.

In view of these comments, we decided to require operators to give only general advice about maintenance assistance. Operators need not maintain lists of specific contractors that might do maintenance work on customer piping. Although government agencies probably could advise customers about State or local laws, this advice probably would not be helpful in carrying out maintenance. Instead of advising inquirers about the details of maintenance, agencies and associations probably would refer them to contractors. Since customers can learn the names of contractors through the yellow pages or local chambers of commerce, the final rule does not require notice of specific contractors, agencies, or associations. The rule (§ 192.16(b)(5)) simply requires notice that the operator (if applicable), plumbers, and heating contractors may be contacted for assistance in maintaining and locating the customer's piping. Under this rule, if an operator does not offer such assistance, it would not have to mention itself as a possible source of assistance. At the same time, an operator may not mention only itself

as a source of assistance on customer piping.

J. Other Helpful Information

1. General

The mandate requires that operators provide information the operator has on operating and maintaining its lines that could assist customers. In turn, we proposed that operators notify customers of "any information that the operator has concerning the operation and maintenance of the customer-owned service line that could aid the customer, such as information on excavation damage prevention, local codes and standards (when applicable), and the age, location, and material of the customer-owned service line" (proposed § 192.16(a)(4)).

2. Age, Location, and Material

TPSSC and about a third of commenters urged us not to require operators to provide information about the age, location, and material of customer piping. Several commenters said that because the information was site specific, operators could not use a notice generally applicable to all customers, as contemplated in the NPRM. Others said operators typically do not have the proposed information about customer piping, and it would be an undue burden to get it. A number of commenters also pointed out that the age of customer piping may not correspond to the date the operator established gas service, because the customer may have replaced or altered the piping since that date.

We agree that operators may not have the proposed information about customer piping, since they are not required by Part 192 to maintain the piping. Also, obtaining the information would be a significant burden that Congress did not intend operators to assume. The mandate requires operators to give customers helpful information based on the operation and maintenance of the operator's pipelines. The mandate does not require operators to gather information about customer piping. Even when operators do have some information about customer piping, requiring them to add the information to notices might not allow the operators to use a general notice to meet the notification rule. Therefore, this final rule does not require operators to notify customers of the age, location, and material of customer piping.

As a result, operators may send each customer a notice on the proper maintenance of customer piping in general. Notices need not be tailored to meet specific customer situations.

However, operators who have specific information about customer piping and wish to include it in notices are encouraged to do so.

3. Local Laws

For reasons discussed above concerning proposed § 192.16(a)(2), several commenters suggested that the final rule not make operators responsible for advising customers about local laws. Since local building codes would be burdensome for operators to track, are the responsibility of local agencies to enforce, and are unlikely to contain instructions on how to carry out piping maintenance, the final rule does not require notice of local laws.

4. Excavation Damage Prevention

Two operators asked us to clarify the information they would have to provide about excavation damage. They suggested the notice stress the need to locate piping before excavating and to dig with care.

We agree that this information would be helpful to customers, because of the large number of gas pipeline accidents attributable to excavation damage. The final rule (§ 192.16(b)(4)) reflects these comments. However, operators are not required to notify customers to contact "one-call" systems to learn the location of buried customer piping before excavating. One-call systems provide such service only for piping of companies that are members of the system. One-call systems generally have no information regarding customer piping.

Apart from the maintenance requirements discussed above, information about preventing excavation damage is probably the most significant information operators have about operating and maintaining their own pipelines that would be helpful to customers. In the interest of producing a general notice limited to basic advice, the final rule does not require notice of any other information related to operation and maintenance of the operator's pipelines. However, operators may supplement the required information as they deem appropriate.

K. Potential Hazards

The mandate requires that operators notify customers about the potential hazards of not maintaining customer piping. As proposed in the NPRM and SNPRM, operators would have to advise customers of "the potential hazards of not maintaining the customer-owned service line, such as corrosion and gas leakage" (proposed § 192.16(a)(5)).

Only a few commenters addressed this proposal. Two commenters thought it would be unfair if operators had to warn their customers that gas piping can be hazardous, while their competitors, fuel oil and electric companies, do not have to give a similar warning. One commenter said that sending notices about potential hazards would not be compatible with the goal of market expansion. Another commenter requested that in the final rule, we insert "reasonably foreseeable" before "potential hazard."

Although we do not have discretion under the mandate not to require notice of potential hazards, we did not find the arguments against such notice persuasive. The risks involved in using fuel oil and electricity have not demanded the same level of public attention as gas pipeline risks. So, from a public policy standpoint, it is not unfair if only gas pipeline operators must warn their customers of risks. Also, we do not agree that warning customers of potential hazards is incompatible with business expansion. Part 192 already requires operators to post signs over their pipelines warning of potential danger (§ 192.707), and to educate the public to recognize gas pipeline emergencies (§ 192.615). These programs and the abundant advertisements about using "one call" systems to guard against the hazards of excavation damage have, to our knowledge, not adversely affected the growth of business. Indeed, we believe people prefer to do business with socially responsible companies that do not hesitate to publicize information that could help prevent accidents. Finally, to qualify "potential hazard" the way one commenter suggested would not enhance the clarity of the final rule.

The proposal concerning notice of potential hazards is adopted in this final rule as § 192.16(b)(2)—the second item in the list of information to be provided, rather than the last item, as proposed. This rearrangement encourages operators to warn customers of potential hazards at the beginning of notices instead of at the end. A notice may mention just two potential hazards: corrosion and leaks. Most commenters referred to these potential hazards in response to the proposal, and service line accidents generally involve these hazards.

L. Frequency and Time of Notification

1. General

The mandate does not specify how often operators must give their customers maintenance advice or when

they must give them the advice. To clarify these points, we proposed that operators notify existing customers within 6 months after publication of the final rule, and new customers within that time or within 30 days after the service line is placed in service, whichever is later (proposed § 192.16(b)).

2. Number of Notices

Several commenters thought the final rule should clearly state whether operators must notify a customer more than once. Other commenters, including NTSB, felt a single notice to each customer would not be sufficient. They recommended that operators send notices annually (to refresh customer memory), every 2 years, every 5 years, or occasionally.

A single notice sent to each present and future customer would satisfy the mandate. None of the advocates for more frequent notification showed that additional notices would significantly improve safety. Furthermore, the cost of periodic notices would be high, and the effect of customer notification on accident prevention is uncertain. There is also an absence of accumulated accident data on customer piping from which to project the benefits of sending multiple notices to the same customers. Consequently, the final rule expressly states that operators must notify each customer only once.

3. New Customers

Three commenters said the proposed rule was unclear whether "new customers" meant new customers on new service lines or new customers on existing service lines. A few operators said it would be a tremendous burden to notify every new customer on an existing service line because of the large changeover in customers. One operator said it has over 100,000 of such new customers annually. These operators would prefer to notify only the first customer on a new service line or to send notices to all customers periodically.

For the mandate to have a continuing effect on customer safety, each present and future customer must receive a maintenance notice if the operator does not maintain covered piping. There would be no continuing effect if operators were to notify just existing customers and the first customers on new service lines. As these customers leave, their successors might lack necessary maintenance information, and the safety of customer piping might decline. So the final rule applies to all new customers. Operators can mitigate the burden of notifying large numbers of

customers by inserting general notices in billing envelopes.

To avoid confusion, the final rule does not distinguish new customers from existing customers. Instead, the rule (§ 192.16(c)) requires operators to notify each customer by a certain date, as discussed next.

4. Time of Notification

AGA and several operators recommended a compliance time of 1 year to notify existing customers, instead of 6 months as proposed. They argued that operators would need more time to learn which customers to notify, to draft and send notices, and to instruct personnel to handle inquiries. These commenters also said more time would ease the burden on staff by allowing operators to spread notifications over a longer period.

For new customers, one operator advised that sending notices within 30 days after the customer's service begins would not fit the company's billing cycle. AGA and INGAA suggested an appropriate time to notify new customers would be the time of first billing, rather than when a service line is placed in service.

We proposed a 6-month compliance period to notify existing customers based primarily on our estimate of the time needed to prepare and send out notices. However, in view of the additional information commenters provided, 1 year now seems more appropriate. Further, because service lines are often left in service during customer changeover, the suggestion to notify new customers upon first billing seems reasonable. However, some operators may not choose billing as the method of notification. And, as one commenter remarked, many farm tap customers who receive gas under a right-of-way agreement are not billed. Considering the variations among billing cycles and the alternative means of distributing notices, we believe 90 days after first receipt of gas at a particular location would be a reasonable deadline by which to notify new customers. Therefore, the final rule requires operators to notify each customer not later than 1 year from today or 90 days after the customer first receives gas at a particular location, whichever is later (§ 192.16(c)).

M. Records

The mandate does not require that operators keep records of the advice they give customers. However, as a way to check compliance, we proposed that "each operator must keep a record of the written notifications" (proposed § 192.16(c)).

AGA and several operators said the type of record and the retention time were unclear under the proposed rule. Maryland suggested that to see if operators have notified customers, inspectors would have to inspect a record of the date a notice was sent, the name of the customer, and a copy of the notice. In contrast, several operators thought keeping a list of notified customers and the dates they were notified would be too burdensome. Three operators suggested the final rule just require maintenance of a copy of the notice being sent to customers.

To check compliance, RSPA and State inspectors will need to view a copy of the notice operators send customers and evidence that notices have been sent to customers. This evidence may relate to the overall notification process, and need not be customer-specific. For example, a record showing the approximate dates notices are mailed or a written procedure for the notification process would be evidence notices have been sent. More in depth checks on compliance could be conducted where warranted without requiring more detailed records. Therefore, we clarified the final rule to provide that operators must maintain a copy of the notice currently in use and evidence that the notices have been sent to customers as required (§ 192.16(d)). Evidence of notifications more than 3 years old may be discarded.

N. Master Meter Operators

One commenter recommended that we specifically exempt operators of master meter systems from the final rule. Operators of master meter systems purchase gas from pipeline companies through master meters, and then resell and distribute the gas to customers. The customers are usually residents of mobilehome parks or housing projects, the operator's primary enterprise.

In developing the NPRM, we assumed the proposed rules would not affect many master meter operators because they generally own all gas distribution piping up to each customer's dwelling. However, as stated above, WMPA advised that the proposed rules would affect mobilehome parks in California because of customer-owned short sections of connector piping. Although that piping was aboveground and would not come under the final rule, it is reasonable to assume that buried connector piping may occur in some master meter systems. So the proposed rule may have affected small entities to a larger extent than we first pictured.

To mitigate this impact, the final rule (§ 192.16(c)) allows master meter operators to continuously post a general

notice as an alternative to sending notices to customers individually. This type of notification is appropriate for master meter systems because there is commonly a prominent place visited by residents, such as a management office, that is suitable for such posting.

Although the final rule probably does not affect many master meter operators, we did not adopt the suggestion to specifically exempt these operators. As operators of distribution pipelines, they come under the mandate when they do not maintain buried customer piping up to building walls. Also, there is no evidence to suggest that customers of master meter operators have less need for safety information than customers of other operators.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Policies and Procedures

The Office of Management and Budget (OMB) does not consider this final rule to be a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, OMB did not review the final rule. Also, DOT does not consider the final rule to be significant under its regulatory policies and procedures (44 FR 11034, February 26, 1979). A final regulatory evaluation is available for review in the docket.

B. Executive Order 12612

We analyzed the final rule under the principles and criteria in Executive Order 12612 ("Federalism"). The final rule does not have sufficient federalism impacts to warrant preparation of a federalism assessment.

C. Regulatory Flexibility Act

I certify, under Section 605 of the Regulatory Flexibility Act, that this final rule will not have a significant economic impact on a substantial number of small entities. For purposes of that act, small entities supply gas to fewer than 10,000 customers, and most small entities are operators of master meter systems. As discussed above, most master meter operators do not come under the final rule because they own all gas piping up to building walls. Master meter operators that do come under the rule may comply merely by posting a notice in a prominent location. So compliance cost will be nominal for the bulk of small entities. The remaining small entities, mostly operators of distribution systems in small towns, will be subject to the same rule as other operators. But, as explained above, operators can either avoid notification costs by maintaining covered piping, or

mitigate costs by including general notices in billing envelopes.

D. Paperwork Reduction Act

OMB has approved the information collection requirements of this final rule under 44 U.S.C. Chapter 35.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

RSPA amends 49 CFR part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 is revised to read as follows:

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

2. Section 192.16 is added to read as follows:

§ 192.16 Customer notification.

(a) This section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building, up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this section, "maintain" means monitor for corrosion according to § 192.465 if the customer's buried piping is metallic, survey for leaks according to § 192.723, and if an unsafe condition is found, either shut off the flow of gas or advise the customer of the need to repair the unsafe condition.

(b) Each operator shall notify each customer once in writing of the following information:

(1) The operator does not maintain the customer's buried piping.

(2) If the customer's buried piping is not maintained, it may be subject to the potential hazards of corrosion and leakage.

(3) Buried gas piping should be—

- (i) Periodically inspected for leaks;
- (ii) Periodically inspected for corrosion if the piping is metallic; and
- (iii) Repaired if any unsafe condition is discovered.

(4) When excavating near buried gas piping, the piping should be located in advance, and the excavation done by hand.

(5) The operator (if applicable), plumbers, and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping.

(c) Each operator shall notify each customer not later than August 14, 1996, or 90 days after the customer first

receives gas at a particular location, whichever is later. However, operators of master meter systems may continuously post a general notice in a prominent location frequented by customers.

(d) Each operator must make the following records available for inspection by the Administrator or a State agency participating under 49 U.S.C. 60105 or 60106:

(1) A copy of the notice currently in use; and

(2) Evidence that notices have been sent to customers within the previous 3 years.

Issued in Washington, D.C. on August 9, 1995.

Ana Sol Gutiérrez,

Deputy Administrator.

[FR Doc. 95-20021 Filed 8-11-95; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

[Docket No. 950424112-5201-02; I.D. 032095B]

RIN 0648-AF37

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 4

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 4 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). Amendment 4 allows the harvest of spiny lobster year-round and establishes a daily bag or possession limit of two spiny lobster per person in the exclusive economic zone off North Carolina, South Carolina, and Georgia.

EFFECTIVE DATES: September 13, 1995, except for § 640.23(a) and (b) which will be effective [September 21, 1995. The incorporations by reference of certain sections of the Florida Administrative Code and Florida Statutes are approved by the Director of the Office of the Federal Register as of September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813-570-5305.