

FEDERAL MARITIME COMMISSION SUMMARY OF FEES—Continued  
 [Effective April 4, 2005]

CFR reference	Application or service	Current fee
<b>PART 515—Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries</b>		
515.5(b)(1)	Application for License	825.00
515.5(b)(3)	Supplementary Investigation	225.00
515.5(b)(2)	Application for Status Change or License Transfer	525.00
515.34	Sale to Public of RPI	108.00
<b>PART 520—Carrier Automated Tariffs</b>		
520.14(c)(1)	Application for Special Permission	195.00
<b>PART 530—Service Contracts</b>		
530.10(c)	Clerical Errors on Service Contracts	315.00
<b>PART 535—Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984</b>		
535.401(g)	New Agreement Requiring Commission Review	1,780.00
535.401(g)	Agreement Amendments Requiring Commission Review	851.00
535.401(g)	Agreement Filing Review under Delegated Authority	397.00
535.401(g)	Carrier Exempt Agreement Filings	138.00
535.401(g)	Terminal Exempt Agreement Filings	75.00
535.401(h)	Database Report on Effective Carrier Agreements	6.00
<b>PART 540—Passenger Vessel Financial Responsibility</b>		
540.4(b)	Passenger Vessel Certificate (Performance)	2,767.00
	Addition or substitution of vessel	1,382.00
540.23(b)	Passenger Vessel Certificate (Casualty)	1,206.00
	Addition or substitution of vessel	605.00
<b>PART 550—Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States</b>		
550.402	Petitions	241.00
<b>PART 555—Actions To Address Adverse Conditions Affecting U.S.-Flag Carriers That Do Not Exist for Foreign Carriers in the United States</b>		
555.4(a)	Petitions	241.00
<b>PART 560—Actions To Address Conditions Unduly Impairing Access of U.S.-Flag Vessels to Ocean Trade Between Foreign Ports</b>		
560.3(a)(2)	Petitions	241.00

[FR Doc. 05-4027 Filed 3-2-05; 8:45 am]  
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**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs Administration**

**49 CFR Parts 192 and 195**

[Docket No. RSPA-03-15734; Amdt. 192-100, 195-84]

RIN 2137-AD95

**Pipeline Safety: Operator Qualifications; Statutory Changes**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Research and Special Programs Administration (RSPA) Office

of Pipeline Safety's (OPS) regulations require operators of gas and hazardous liquid pipelines to conduct programs to qualify individuals who perform certain safety-related tasks on pipelines. Congress addressed these programs through an amendment to the Federal pipeline safety law (49 U.S.C. Chap. 601). In accordance with the mandates in that amendment, this Direct Final Rule codifies the new program requirements concerning personnel training, notice of program changes, government review and verification of programs, and use of on-the-job performance as a qualification method.

**DATES:** This Direct Final Rule goes into effect July 1, 2005. If RSPA/OPS does not receive any adverse comment<sup>1</sup> or

<sup>1</sup> An adverse comment is one which explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or

notice of intent to file an adverse comment by May 2, 2005, it will publish a confirmation document within 15 days after the close of the comment period. The confirmation document will announce that this Direct Final Rule will go into effect on the date stated above or at least 30 days after the document is published, whichever is later. If RSPA/OPS receives an adverse comment, it will publish a timely notice to confirm that fact and withdraw this Direct Final Rule in whole or in part. RSPA/OPS may then incorporate changes based on the adverse comment

approach, or would be ineffective or unacceptable without a change. Comments that are frivolous or insubstantial will not be considered adverse under this procedure. A comment recommending a rule change in addition to the rule will not be considered an adverse comment, unless the commenter states why the rule would be ineffective without the additional change. (49 CFR 190.339(c)).

into a subsequent Direct Final Rule or may publish a Notice of Proposed Rulemaking.

**ADDRESSES:** You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Alternatively, you may submit written comments to the docket electronically at the following Web address: <http://dms.dot.gov>. See the **SUPPLEMENTARY INFORMATION** section for additional filing information.

**FOR FURTHER INFORMATION CONTACT:** Stanley Kastanas by phone at (202) 366-3844; or by e-mail at [stanley.kastanas@rspa.dot.gov](mailto:stanley.kastanas@rspa.dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Filing Information, Electronic Access, and General Program Information**

All written comments should identify the docket and amendment numbers stated in the heading of this document. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to <http://dms.dot.gov>, click on "Comment/Submissions." You can also read comments and other material in the docket at <http://dms.dot.gov>.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

**Current Program Regulations**

RSPA/OPS's pipeline safety regulations require operators of gas and hazardous liquid pipelines to conduct programs for qualification of pipeline personnel (49 CFR part 192, subpart N, and part 195, subpart G). The purpose of the qualification programs is to ensure that individuals performing certain safety-related tasks on pipelines, called covered tasks,<sup>2</sup> are qualified to

perform those tasks. Operators must evaluate the individual's ability to perform the covered task and to respond to abnormal conditions (§§ 192.805(b) and 195.505(b)). After initial qualification, operators must reevaluate the individual's ability at appropriate intervals (§§ 192.805(g) and 195.505(g)). Operators may use any suitable form of evaluation, including written or oral examination, review of work performance history, and observation of on-the-job performance, on-the-job training, or simulations (§§ 192.803 and 195.503). However, review of work performance history may not be the sole method of evaluation (§§ 192.809(d) and 195.509(d)). To enable on-the-job training, the regulations allow individuals who lack requisite qualifications to perform covered tasks while under the direction and observation of a qualified individual (§§ 192.805(c) and 195.505(c)).

In addition to the regulations, RSPA/OPS has developed protocol questions and guidance criteria to assist RSPA/OPS and state agency inspectors in evaluating operators' programs and verifying compliance with the regulations. This material is available at RSPA/OPS's Web site dedicated to personnel qualification topics (<http://primis.rspa.dot.gov/oq/index.htm>).

**Congressional Action and Related Changes to Program Regulations**

In Section 13 of the Pipeline Safety Improvement Act of 2002 (Pub. L. 107-355, 116 Stat. 2985), Congress addressed the content of operators' personnel qualification programs by adding a new section (49 U.S.C. 60131) to the Federal pipeline safety law (49 U.S.C. Chap. 601). Many provisions of 49 U.S.C. 60131 dictate either the content of operators' programs or DOT regulation of that content. As explained below, RSPA/OPS's existing regulations, including supplementary protocols and guidance material, are consistent with many of these content provisions, but in a few cases new regulations are needed to codify the remaining Congressional mandates.

This Direct Final Rule codifies the mandates in 49 U.S.C. 60131(e)(6) in which Congress directly ordered operators to adopt programs that meet the requirements of 49 U.S.C. 60131(b)(2)(B) and (d) (see below) no later than December 17, 2004. In the November 26, 2004, issue of the **Federal Register**, RSPA/OPS published an Advisory Bulletin to inform operators about this statutory obligation (69 FR 69028). This Direct Final Rule also codifies the review and verification

requirements in 49 U.S.C. 60131(b)(2)(C).

**Qualification Programs.** In 49 U.S.C. 60131(a), Congress directed DOT to require each operator to develop and adopt a qualification program to ensure that individuals performing covered tasks are qualified to do so. In 49 U.S.C. 60131(b)(1), Congress directed DOT to establish standards and criteria for these programs. RSPA/OPS believes its regulations in 49 CFR part 192, subpart N, and part 195, subpart G are consistent with these broad directives.

**Evaluation Methods.** Under 49 U.S.C. 60131(b)(2)(A), DOT's standards and criteria must include methods for evaluating the acceptability of an individual's qualifications. Also, 49 U.S.C. 60131(b)(2)(B), provides that the standards and criteria must require operators to develop and implement written plans and procedures for using the methods to qualify individuals to an acceptable level. RSPA/OPS believes its regulations satisfy these specific directives. Sections 192.803 and 195.503 specify acceptable methods for evaluating an individual's qualifications. Also, under §§ 192.805 and 195.505, operators must have and follow written programs that describe use of the methods to conduct evaluations.

**Program Review and Verification.** Under 49 U.S.C. 60131(b)(2)(C), Congress directed that DOT's standards and criteria must include a requirement that operators' plans and procedures for using evaluation methods must be reviewed and verified under 49 U.S.C. 60131(e). Among other things, 49 U.S.C. 60131(e) directs DOT to review each operator's qualification program and verify its compliance with the required standards and criteria and that it includes the program elements described in 49 U.S.C. 60131(d), which are discussed below. As authorized by the Federal pipeline safety law, RSPA/OPS and state pipeline safety inspectors already review operators' qualification programs to verify compliance with the regulations in 49 CFR part 192, subpart N, and part 195, subpart G. Also, future reviews will cover any program changes operators have to make because of 49 U.S.C. 60131 and this Direct Final Rule. However, the regulations do not state that operators' programs are subject to such reviews. Therefore, in response to the specific directive of 49 U.S.C. 60131(b)(2)(C), by this Direct Final Rule, RSPA/OPS is amending §§ 192.809(a) and 195.509(a) to require that operators make their written qualification programs available for review by RSPA/OPS or a state pipeline safety agency.

<sup>2</sup> Covered task means an activity, identified by the operator, that: (1) Is performed on a pipeline facility; (2) is an operations or maintenance task; (3) is performed as a requirement of part 192 or 195; and (4) affects the operation or integrity of the pipeline. (49 CFR 192.801(b) and 195.501(b)).

*Program Compliance Deadline.* In 49 U.S.C. 60131(c), Congress directed DOT to require each pipeline operator to develop and adopt, not later than December 17, 2004, a qualification program that complies with the standards and criteria described in 49 U.S.C. 60131(b). As explained above, RSPA/OPS's regulations already require operators to have qualification programs that comply with the standards and criteria described in 49 U.S.C. 60131(b) (1) and (b)(2)(A) and (B). In addition, under the Federal pipeline safety law, operators written qualification programs are subject to review as required by 49 U.S.C. 60131(b) (2)(C). Therefore, RSPA/OPS considers the directive in 49 U.S.C. 60131(c) to have been satisfied.

*Observation of On-the-Job Performance.* In 49 U.S.C. 60131(d)(1), Congress ratified the methods of evaluation included in §§ 192.803 and 195.503. However, Congress declared that an operator's method of evaluation "may not be limited to observation of on-the-job performance, except with respect to tasks for which [DOT] has determined that such observation is the best method of examining or testing qualifications." (As discussed above, Congress directly ordered operators to implement this restriction no later than December 17, 2004.) The current regulations in 49 CFR part 192, subpart N, and part 195, subpart G do not preclude operators from using observation of on-the-job performance as the sole method of evaluation, and RSPA/OPS has not determined that such observation is the best method of evaluation for any particular covered task. Therefore, by this Direct Final Rule, RSPA/OPS is establishing §§ 192.809(e) and 195.509(e) to restrict operators from using observation of on-the-job performance as the sole method of evaluation.

Anyone who wants RSPA/OPS to determine that observation of on-the-job performance is the best method of evaluation for a particular task may file a petition for rulemaking under the rulemaking procedures in 49 CFR 190.331. In addition, for pipeline facilities under the direct regulatory authority of RSPA, operators may petition RSPA/OPS for waiver of § 192.809(e) or § 195.509(e) as provided by 49 U.S.C. 60118(c). For intrastate facilities under the safety regulatory authority of a certified state agency, waiver petitions may be filed with the state agency as provided by 49 U.S.C. 60118(d). However, to avoid making determinations case-by-case, RSPA/OPS is interested in developing criteria that would identify those covered tasks for which observation of on-the-job

performance is the best method of evaluation. RSPA/OPS will also pursue this idea through its ongoing collaboration with the American Society of Mechanical Engineers to create a consensus standard on qualification of operator personnel.

Also in 49 U.S.C. 60131(d)(1), Congress directed DOT to "ensure that the results of any such observations are documented in writing." RSPA/OPS believes the recordkeeping requirements of §§ 192.807 and 195.507 are sufficiently responsive to this directive. Under these requirements, operators have to keep records that identify qualified individuals, the tasks they are qualified to perform, and the qualification method.

*Qualification Deadline.* In 49 U.S.C. 60131(d)(2), Congress declared that operators must complete the qualification of all individuals performing covered tasks not later than 18 months after the date of adoption of the qualification program. RSPA/OPS believes no changes are needed to the regulations in 49 CFR part 192, subpart N, and part 195, subpart G to meet this congressional order. Under §§ 192.809 and 195.509, operators had to have a written qualification program by April 27, 2001, and complete the qualification of individuals performing covered tasks by October 28, 2002.

*Requalification.* Under 49 U.S.C. 60131(d)(3), operators' qualification programs must have a periodic requalification component that provides for evaluation of individuals by an acceptable method. As noted above, §§ 192.805 and 195.505 already require that operators reevaluate the abilities of qualified individuals at appropriate intervals. RSPA/OPS believes these requirements are sufficient to implement 49 U.S.C. 60131(d)(3).

*Training.* Under 49 U.S.C. 60131(d)(4), Congress declared that operators qualification programs must: provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities.

(As discussed above, Congress ordered operators to implement this training requirement no later than December 17, 2004.) Although observation of on-the-job training or training by simulation are allowable methods of evaluations, RSPA/OPS's regulations do not specifically require that operators' qualification programs provide this or any other training for individuals. Therefore, by this Direct Final Rule, RSPA/OPS is adding new §§ 192.805(h) and 195.505(h) to require

that operators' have qualification programs that provide training consistent with Congress' order. RSPA/OPS believes that on-the-job training or training by simulation that many programs already provide are appropriate ways to meet the order and the new regulations. In addition, RSPA/OPS does not intend this new program requirement to mean that operators must pay for training provided by their programs.

*Notice of Significant Program Modification.* Section 60131(e) concerns review by DOT of each operator's qualification program to verify that it meets the required standards and criteria and program elements. Under § 60131(e)(4), if the operator of a pipeline facility significantly modifies a program that has been verified, the operator must notify DOT of the modifications, and DOT has to review and verify the modifications. At present, RSPA/OPS's regulations do not require that operators notify RSPA/OPS or a participating state pipeline safety agency of a significant program modification. Therefore, by this Direct Final Rule, RSPA/OPS is establishing §§ 192.805(i) and 195.505(i) to require such notification.

#### Regulatory Analyses and Notices

*Executive Order 12866 and DOT Policies and Procedures.* RSPA/OPS does not consider this Direct Final Rule to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not received a copy of this rulemaking to review. RSPA/OPS also does not consider this rulemaking to be significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

RSPA/OPS prepared a Regulatory Evaluation of the costs and benefits of the regulations established by this Direct Final Rule, and a copy is in the docket. The evaluation concludes that no costs or benefits are attributable to the regulations.

*Regulatory Flexibility Act.* Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA/OPS must consider whether its rulemakings have a significant economic impact on a substantial number of small entities. The regulations established by this Direct Final Rule are consistent with current regulatory requirements or direct congressional orders to operators. Therefore, based on the facts available about the anticipated impacts of this rulemaking, I certify that this rulemaking will not have a significant impact on a substantial number of small

entities. If you have any information that this conclusion about the impact on small entities is not correct, please provide that information to the public docket as described above.

*Executive Order 13175.* This Direct Final Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Because the Direct Final Rule does not significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

*Paperwork Reduction Act.* This Direct Final Rule contains two information collection requirements in response to a congressional directive. The first requirement is that operator's written qualification programs provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities (see §§ 192.805(h) and 195.505(h)). This requirement is consistent with a mandate directed to operators by Congress that operators have the required training in their programs by December 17, 2004 (49 U.S.C. 60131(d)(4) and (e)(6)). The second requirement is that operators must notify the Administrator of RSPA or a participating state agency if the operator significantly modifies a qualification program after the Administrator or state agency has verified that it meets applicable requirements (see §§ 192.805(i) and 195.505(i)). This requirement also is consistent with a mandate directed to operators by Congress that operators give the prescribed notices (49 U.S.C. 60131(e)(4)).

Regarding the training requirement, we believe that even prior to the congressional mandate operators' programs provided the requisite training in response to RSPA/OPS's protocols and guidance material. As to the notification requirement, in our experience operators do not routinely make significant modifications to their qualification programs. And if a modification does occur that now requires notification because of the statutory mandate, notice may be provided simply and quickly by e-mail or telephone. So no net increase in paperwork burden is likely from the training and notification requirements. Because no net increase in paperwork burden is likely from this Direct Final Rule, we believe that submitting an

analysis of the burdens to OMB under the Paperwork Reduction Act is unnecessary.

*Unfunded Mandates Reform Act of 1995.* This Direct Final Rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the rule.

*National Environmental Policy Act.* For purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), RSPA/OPS prepared an Environmental Assessment of its pipeline personnel qualification regulations when they were first issued (64 FR 46853; Aug. 27, 1999). A copy of that Environmental Assessment is in Docket No. RSPA-98-3783. The assessment determined that the regulations would not have a detrimental impact on the environment because they were expected to reduce the number of incidents related to human error, with a resulting reduction in the potential for environmental damage. The assessment also determined that the regulations would not significantly affect the quality of the human environment. The present Direct Final Rule merely advances the purposes of the original regulations by adding new program requirements concerning instruction and evaluation of operator personnel and information collection. Like the original regulations, these matters should have no detrimental impact on the environment. Therefore, RSPA/OPS does not believe that any further assessment of environmental impact is needed. If you disagree with this conclusion, please submit your comments to the docket as described above.

*Executive Order 13132.* This Direct Final Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). The Direct Final Rule does not have any provision 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 State and local governments; or (3) preempts State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

*Executive Order 13211.* This rulemaking is not a "Significant energy action" under Executive Order 13211. It

is not a significant regulatory action under Executive Order 12866 and 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

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

##### 49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

■ Accordingly, RSPA/OPS amends 49 CFR parts 192 and 195 as follows:

#### PART 192—[AMENDED]

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

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

- 2. In § 192.805,
  - a. Republish the introductory text,
  - b. Remove "and" from the end of paragraph (f),
  - c. Remove the period from the end of paragraph (g) and add a semicolon in its place, and
  - d. Add new paragraphs (h) and (i) to read as follows:

##### § 192.805 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

\* \* \* \* \*

(h) After December 16, 2004, provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities; and

(i) After December 16, 2004, notify the Administrator or a state agency participating under 49 U.S.C. Chapter 601 if the operator significantly modifies the program after the Administrator or state agency has verified that it complies with this section.

■ 3. In § 192.809, revise paragraph (a) and add a new paragraph (e) to read as follows:

##### § 192.809 General.

(a) Operators must have a written qualification program by April 27, 2001. The program must be available for review by the Administrator or by a state agency participating under 49

U.S.C. Chapter 601 if the program is under the authority of that state agency.

\* \* \* \* \*

(e) After December 16, 2004, observation of on-the-job performance may not be used as the sole method of evaluation.

**PART 195—[AMENDED]**

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

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

■ 2. In § 195.505,

■ a. Republish the introductory text,

■ b. Remove “and” from the end of paragraph (f),

■ c. Remove the period from the end of paragraph (g) and add a semicolon in its place, and

■ d. Add new paragraphs (h) and (i) to read as follows:

**§ 195.505 Qualification program.**

Each operator shall have and follow a written qualification program. The program shall include provisions to:

\* \* \* \* \*

(h) After December 16, 2004, provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities; and

(i) After December 16, 2004, notify the Administrator or a state agency participating under 49 U.S.C. Chapter 601 if the operator significantly modifies the program after the Administrator or state agency has verified that it complies with this section.

■ 3. In § 195.509, revise paragraph (a) and add a new paragraph (e) to read as follows:

**§ 195.509 General.**

(a) Operators must have a written qualification program by April 27, 2001. The program must be available for review by the Administrator or by a state agency participating under 49 U.S.C. Chapter 601 if the program is under the authority of that state agency.

\* \* \* \* \*

(e) After December 16, 2004, observation of on-the-job performance may not be used as the sole method of evaluation.

Issued in Washington, DC, on February 25, 2005.

**Elaine E. Joost,**

*Acting Deputy Administrator.*

[FR Doc. 05-4122 Filed 3-2-05; 8:45 am]

**BILLING CODE 4910-60-P**