Coordinates used for this proposal are 33–44–41 NL; 116–59–13 WL.

DATES: Comments must be filed on or before January 31, 2000, and reply comments on or before February 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Peter Gutmann, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, N.W., Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–349, adopted December 1, 1999, and released December 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–33895 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2759; MM Docket No. 99–348; RM–9765]

Radio Broadcasting Services; Tallulah, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Joe Kool Broadcasting requesting the allotment of Channel 248A to Tallulah, Louisiana, as that community's second local FM transmission service. Coordinates used for this proposal are 32–25–07 NL; 91–12–15 WL.

DATES: Comments must be filed on or before January 31, 2000, and reply comments on or before February 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Donald B. Brady, d/b/a Joe Kool Broadcasting, 204 Duncan Avenue, Jackson, MS 39202.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–348, adopted December 1, 1999, and released December 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–33896 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket RSPA–99–5455]

RIN 2137–AC34

Pipeline Safety: Areas Unusually Sensitive to Environmental Damage

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule defines drinking water and ecological areas that are unusually sensitive to environmental damage if there is a hazardous liquid pipeline release. We refer to these areas as unusually sensitive areas (USAs). The proposed definition was created through a series of public workshops and our collaboration with a wide-range of federal, state, public, and industry stakeholders. RSPA is working on a pilot test that implements the proposed definition and identifies USAs in three states: Texas, Louisiana, and California. Other government agencies, environmental groups, and academia will evaluate the final results of this pilot test. RSPA will publish the results of the pilot test and technical analysis once they are complete. This proposed rule would not require specific action by pipeline operators. However, this proposed definition would be used as criteria in evaluating requirements by certain existing and future regulations.

DATES: Send written comments by June 27, 2000.

ADDRESSES: Send written comments in duplicate to the Dockets Facility, U.S. Department of Transportation, Room #PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Persons who want confirmation of mailed comments must include a self-addressed stamped postcard. Comments may also be e-mailed to

ops.comments@rspa.dot.gov in ASCII or text format. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Persons interested in receiving future information, including the final pilot results, should visit the OPS Home Page at http://ops.dot.gov, or send their name, affiliation, address, and phone number to Christina Sames, U.S. Department of Transportation, Office of Pipeline Safety, 400 Seventh Street SW, DPS–11, Washington, D.C. 20590–0001.

FOR FURTHER INFORMATION CONTACT: Christina Sames at (202) 366–4561 or christina.sames@rspa.dot.gov. Copies of this document or other material in the docket, including material from the public workshops, can be obtained from the Dockets Facility. The public may also review material in the docket by accessing the Docket Management System's home page at http://dms.dot.gov. An electronic copy of any document published in the **Federal Register** may be downloaded from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661.

SUPPLEMENTARY INFORMATION:

Legislative Mandates

In 1992, Congress amended the federal pipeline safety statute to require the Secretary of Transportation (Secretary) to prescribe regulations that establish criteria for identifying each hazardous liquid pipeline facility and gathering line located in an area that the Secretary describes as unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident (USAs). The Secretary was to consider all hazardous liquid pipeline facilities and gathering lines, whether or not they are subject to safety regulation under 49 U.S.C. Chapter 601. The Secretary also had to consult with the Environmental Protection Agency (EPA) in establishing the criteria.

The following were to be considered:

- Earthquake zones and areas subject to substantial ground movements, such as landslides;
- Areas where ground water contamination would be likely in the event of the rupture of a pipeline facility;
- Freshwater lakes, rivers, and waterways; and
- River deltas and other areas subject to soil erosion or subsidence from flooding or other water action, where pipeline facilities are likely to become exposed or undermined.

In 1996, Congress amended the USA identification requirements (49 U.S.C. Section 60109). The Secretary was still required to prescribe standards that establish criteria for identifying each hazardous liquid pipeline facility and gathering line located in an USA. However, in establishing criteria, the Secretary was now to consider areas where a pipeline rupture would likely cause permanent or long-term environmental damage, including:

- Locations near pipeline rights-of-way that are critical to drinking water, including intake locations for community water systems and critical sole source aquifer protection areas; and
- Locations near pipeline rights-of-way that have been identified as critical wetlands, riverine or estuarine systems, national parks, wilderness areas, wildlife preservation areas or refuges, wild and scenic rivers, or critical habitat areas for threatened and endangered species.
- A Presidential memorandum that accompanied the 1996 statute clarified Administration policy on USAs. The memorandum said that the listed examples should be considered, but are not exclusive and that DOT was to accord full protection to all wetlands and other aquatic areas. DOT was also to consider both the potential for short term and permanent or long term injuries to natural resources or the environment.

The Secretary was to use the identification of these unusually sensitive environmental areas in future rulemakings, that include requiring additional prevention and inventory measures in these sensitive areas. For instance, 49 U.S.C. 60109(a)(2) directs the Secretary to require operators to identify unusually sensitive environmental areas through maps and pipeline inventories.

The Secretary is to consider requiring each pipeline in an unusually sensitive environmental area to be inspected periodically and to prescribe when an instrumented internal inspection device should be used to inspect the pipeline (49 U.S.C. 60102(f)(2)). Also, the Secretary is to survey and assess the effectiveness of emergency flow restricting devices and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures, and to prescribe regulations on the circumstances under which an operator of a hazardous liquid pipeline facility must use an emergency flow restricting device or such other procedure, system, or equipment (49 U.S.C. 60102(j)).

June 1994 Public Meeting: Consideration of an OPA Approach to USAs

On June 28, 1994, RSPA held a public meeting to gather data that would allow RSPA to establish criteria for identifying environmentally sensitive areas on or near hazardous liquid pipelines. RSPA would then use the established criteria to carry out the requirements of the Oil Pollution Act (OPA) and 49 U.S.C. Section 60109.

Under our regulations that implement OPA requirements for pipelines (49 CFR part 194), an operator of an onshore oil pipeline that, because of its location, could reasonably be expected to cause substantial harm or significant and substantial harm to the environment by a release into or on any navigable waters or adjoining shorelines, must prepare and submit an oil spill response plan. These requirements are intended to improve response capabilities and to reduce the environmental impact of oil discharged from onshore oil pipelines.

The OPA regulations require an operator to identify the areas potentially affected by its pipeline that are of greatest vulnerability to an oil discharge, including navigable waters, public drinking water intakes, and environmentally sensitive areas. Environmentally sensitive areas were defined as ''an area of environmental importance which is in or adjacent to navigable waters.'' These areas included wetlands, national parks, wilderness and recreational areas, wildlife refuges, marine sanctuaries, and conservation areas.

We hoped to create a single definition for environmentally sensitive areas that could be used for OPA spill response planning and for the preventive measures intended by the pipeline safety statute. As previously discussed, these pipeline safety requirements included increased inspection requirements, emergency flow restricting devices, and maps and pipeline inventories of pipelines in unusually sensitive areas.

Participants at the meeting included representatives from the EPA, U.S. Coast Guard, Department of Agriculture, Department of Interior, Department of Commerce, hazardous liquid pipeline industry, and the public. Participants discussed a draft definition that focused on areas where a hazardous liquid release could create significant long-term environmental harm or represent an imminent threat to human health. These areas included community water intakes; freshwater lakes, rivers and waterways; state or Federal wetlands, parks, natural areas, wilderness areas,

wild or scenic rivers, wildlife refuges or wildlife sanctuaries specifically designated, identified, and located by the Area Contingency Plans; and river deltas and other areas subject to soil erosion or subsidence from flooding or other water action, where pipeline facilities are likely to become exposed or undermined. Participants also discussed whether common criteria could be created for both spill response planning and prevention measures.

Meetings With Other Federal Agencies and the Pipeline Industry

RSPA held several meetings with other federal agencies and the pipeline industry following the June 1994 public meeting. The meetings were held to obtain additional information on sensitive resources that should be considered when defining USAs. Participants at the meetings included the EPA; the U.S. Coast Guard; the Departments of Interior, Commerce, and Agriculture; and the hazardous liquid pipeline industry.

Several participants at the meetings stated that it would be better to separate the OPA definition of environmentally sensitive areas from the USA definition. They stated that it would be better to maintain a broad definition within OPA for spill response functions and that a narrow definition should be created for USAs and the prevention measures the USA definition would be applied to.

Participants at the meetings also discussed the resources that should be considered when defining USAs. These included community drinking water intakes, threatened and endangered species, populated areas, economic resources, and commercial water intakes. Participants stated that a decision tree or matrix should be developed to help identify which environmentally sensitive areas were USAs.

RSPA used the information gathered at these meetings to create a revised draft definition for USAs. The definition built upon the values other Federal agencies had established for activities under OPA, but more narrowly identified those areas that were unusually sensitive to damage from a hazardous liquid release. The revised definition focused on areas where a release would reach the sensitive area before the release was contained or before the area was protected.

June 1995 Public Workshop: Consideration of a Three Tier Approach to USAs

On June 15 and 16, 1995, RSPA held a public workshop to openly discuss the revised draft definition for USAs (60 FR 27948, May 26, 1995). Participants included representatives from the U.S. Coast Guard; the Departments of Interior, Agriculture, and Commerce; the EPA; non-government agencies; the hazardous liquid pipeline industry; and the public.

The revised draft definition considered three tiers of USAs. RSPA considered phasing in the three tiers to give operators more time to determine which USAs could be affected by a hazardous liquid pipeline release.

Tier One consisted of areas that could affect human health if contaminated, such as intakes for community drinking water systems and sole source aquifers. Sole source aquifers supply at least half of the drinking water consumed in the area above the aquifer and have no alternative sources that could supply all those who get their drinking water from the aquifer. In the tier model, community drinking water systems and sole source aquifers that could reasonably be expected to be affected by a release would be considered the most sensitive and highest priority areas.

We gave Tier Two, USAs along surface water, the second highest priority. Tier Two took into account the surface water habitat's natural ability to restore itself to the condition that existed before the release, and the biological and human use resources in the body of water and along the water's edge. The habitat, the biological resources, and the human use resources were assigned numerical sensitivity ratings. Combining the numerical ratings of these three resources determined if a particular area was an USA.

Tier Three, USAs within terrestrial environments, was given the third highest priority. Tier Three, like Tier Two, took into account biological resources and human use resources be studied to determine if a given area is an USA. Each was assigned a numerical sensitivity rating; the combination of these ratings determined if a particular area was an USA.

Participants at the workshop discussed the above approach and criteria. Participants stated the tiered approach was complicated and that operators may not be able to carry out the process. Participants requested that additional workshops be held to further discuss this complex topic.

October 1995 Public Workshop: Discussions on the Three Tier Approach Continue and Discussions on the USA Process

On October 17, 1995, RSPA held a second public workshop on USAs (60 FR 44824; August 29, 1995) that focused on developing a process that could be used to determine if an area is an USA. Participants asked that the process include a series of workshops on topics such as guiding principles, defining terms that may be used when referring to USAs, and protecting drinking water sources, biological resources, and human use resources.

The hazardous liquid pipeline industry provided information on its current research on USAs and recommended that a definition consider the resource to be protected, the likelihood of a given pipeline impacting that resource, and what can be done to reduce the risk to the resource. Other participants recommended integrating factors on the likelihood of a rupture occurring and the severity of the consequence into the USA definition. Participants also discussed guiding principles that could be used when determining if a given area is a USA.

January 1996 Public Workshop: Guiding Principles and the Creation of a USA Model

RSPA held a third workshop on January 18, 1996, to further discuss the guiding principles for determining USAs (61 FR 342; January 4, 1996). Participants at the workshop included the EPA; the Departments of Interior, Agriculture, and Commerce; the hazardous liquid pipeline industry, and the public. The participants stated that significant drinking water and ecological resources should be considered USAs, but that economic or recreational areas should not. They maintained that economic and recreational areas could be restored following a hazardous liquid release, but certain drinking water or ecological resources could be irreparable if affected by a release. Several participants also questioned including cultural resources as USAs. These participants stated that most cultural resources can be repaired or replaced if they are impacted by a hazardous liquid release. Indian tribal concerns were also discussed and participants requested that additional research be conducted in this area.

Participants at the workshop identified consensus guiding principles to help RSPA determine which resources we should concentrate on (areas of primary concern), which areas of primary concern are the most sensitive to a hazardous liquid release, and how to collect and process resource data. The following is the list of those guiding principles:

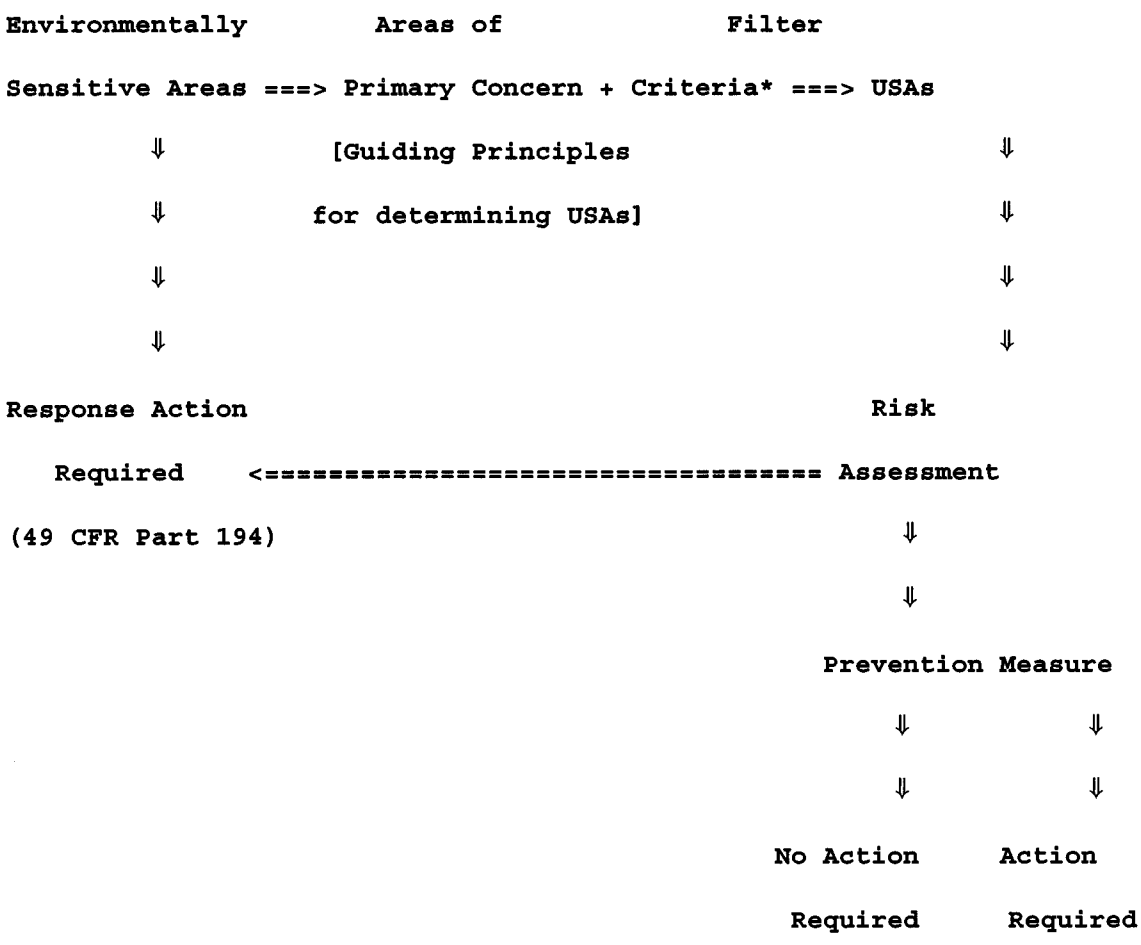
- Human health and safety and serious threat of contamination are always to be considered.

- A functional definition of significant must be developed to determine USAs.
- Only areas in the trajectory of a potential spill, e.g. down gradient, should be considered.
- It is expected that no pipeline operator will be required to collect natural field resource data to determine USAs.
- USAs should be subject to a systematic review process. USAs may change through time as species migrate, change location, or for other reasons. The USA definition should be explicit and practical in application.
- All phases of the USA definition process should be pilot tested for validity, practicality, and workability, to the extent practical.
- The government agencies must describe and identify USAs so that the data will not be subject to various interpretations and will be applied consistently.
- Sources of USA data must be readily available to the public and uniform in criteria and standards.
- The standards and criteria for resource sensitivity should be uniform on a national basis such that equivalent resources receive equivalent sensitivity assessments regardless of regionally based priorities.

In addition to the guiding principles, the following guidelines were created:

- Workshops for each phase of developing a USA definition should include technical experts, representatives, and field personnel with appropriate experience from agencies as well as from industry.
- Public workshops should be used to gather information on the criteria that will determine USAs.
- The USA definition should be complete before its use in a rulemaking.
- The implementation of resource assessment and protection under the USA definition could be phased.
- All terms in the USA definition should be defined.
- National consistency in application of the USA definition should be the goal.
- Guidelines for data quality should include consistency, accuracy, and scope.
- Encourage open communication with land or resource managers in USAs.
- The ranking of resources or adding of values of several resources to reach a threshold USA quantity, as discussed in the June 1995 workshop, is not practical for many pipeline operators.

Participants at the workshop also created the following model of how the USA process could work. In this model, all areas that have been designated as environmentally sensitive are considered. From this large set, areas of greater concern due to their sensitivity to a hazardous liquid release are identified. These resource areas are called areas of primary concern. Filter criteria are then applied to the areas of primary concern to determine which areas of primary concern are unusually sensitive to damage from a potential hazardous liquid release. Filter criteria are designed to consider the likelihood that the resource could be impacted by a release, the guiding principles, the sensitivity of the resource, if the resource is irreparable or irreplaceable, if there are substitutes for the resource, and the criticality of the resource.



This model was used in all of the ensuing workshops and technical meetings and continues to be used in the current proposal. Finally, participants considered and identified the USA terms that they thought needed to be clarified.

April 1996 Public Workshop: USA Terms

The fourth public workshop on April 10–11, 1996, (61 FR 13144; March 26, 1996; Docket PS–140(d)), focused on criteria, components, and parameters of terms that have been used when describing USAs. These terms include the following: Significant, Threat of significant contamination, Contamination, Ecological, Drinking water resources, Recreational areas, Economic areas, Cultural areas, Readily available, and Uniform. Participants also discussed the scope and objectives of any additional USA workshops.

API Technical Meeting on Drinking Water Resources

On May 9–10, 1996, the API held a meeting of technical experts to discuss drinking water resources. RSPA and EPA attended this meeting and discussed our draft paper on drinking water resources that RSPA intended to present at its public workshop on drinking water resources. The draft discussed possible resource areas of primary concern and filtering criteria that could be used in determining which drinking water resources are unusually sensitive to damage from a hazardous liquid pipeline release.

June 1996 Public Workshop: Drinking Water Resources

RSPA held a fifth workshop on June 18–19, 1996, (61 FR 27323; May 31, 1996; Docket PS–140(e)) to discuss drinking water resources. Participants at this workshop included the EPA, the American Waterworks Association, Stanford University, the University of Alaska, and the public. This workshop focused on identifying critical drinking water resources (drinking water areas of primary concern) and possible filtering criteria that could be used to identify drinking water resources that are USAs.

Participants identified public water systems, wellhead protection areas, and sole source aquifers as drinking water areas of primary concern. Filtering criteria discussed include the depth of the aquifer, the geology surrounding the drinking water resource, and if the public water system has an adequate alternative drinking water supply.

Additional Technical Meetings

In addition to the five public workshops, we have had over a dozen meetings with other government agencies to discuss drinking water, ecological, and cultural resources. The API has also held meetings of technical experts to discuss unusually sensitive drinking water and ecological resources. RSPA, EPA, the Departments of Interior, Commerce, and Agriculture, The Nature Conservancy, and academia attended the API meetings.

API's technical meetings were on October 23–24, 1996, and June 25–26, 1997. Attendees discussed possible ecological areas of primary concern and filtering criteria that could be used to determine which ecological resources are unusually sensitive to damage from a hazardous liquid pipeline release. The significant ecological resources that were identified during the meetings included threatened and endangered species, critically imperiled and imperiled species, depleted marine mammals, and areas containing a large percent of the world's population of a migratory waterbird species. Filtering criteria focused on the extent to which a species is endangered, areas that are critical to multiple sensitive species, and areas where a large percent of a species population could be impacted. Notes from these technical meetings are in the Docket.

How RSPA Will Use the USA Definition

RSPA will use the definition for identifying USAs in current and future regulations. Any regulatory application of this definition will be aimed at ensuring that operators implement appropriate protective measures for pipelines in USAs.

Regulations where operators may have to identify USAs include the Risk-based Alternative to Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines (63 FR 59475; November 4, 1998), Response Plans for Onshore Oil Pipelines (62 FR 67292; December 24, 1997), Hazardous Liquid Pipelines Operated at 20% or Less of Specified Minimum Yield Strength (49 CFR Part 195), Emergency Flow Restricting Devices, (Docket PS–133), Increased Inspection Requirements, (Docket PS–141) and Pipeline Safety: Enhanced Safety and Environmental Protection for Gas Transmission and Hazardous Liquid Pipelines in High Consequence Areas, (64 FR 56725; October 21, 1999)

Under the ''Risk-based Alternative to Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines'' rule (49 CFR § 195.303), operators may elect a risk-based alternative in lieu of hydrostatically testing certain older pipelines. The alternative establishes test priorities based on the inherent risk of a given pipeline segment. One of the risk factors is to determine the pipeline segment's proximity to environmentally sensitive areas when we issued the final rule (63 FR 59475; November 4, 1998), we explained that until we defined these areas, operators were to use their best judgement in applying this factor. We further said that we may define the environmental factor in a future rulemaking.

Under 49 CFR part 194, ''Response Plans for Onshore Oil Pipelines,'' operators must consider areas of environmental importance that are in or adjacent to navigable waters for spill response planning. These regulations were mandated by the Federal Water Pollution Control Act as amended by the Oil Pollution Act of 1990 (OPA). RSPA intends to amend the definition of environmental importance to include USAs, once USAs are defined.

Hazardous liquid pipelines that operate at 20% of the specified minimum yield strength (SMYS) or less are currently exempt from 49 CFR part 195 regulations if they are in rural areas. When we issued the final rule extending 49 CFR part 195 regulations to certain pipelines operating at 20% SMYS or less (59 FR 35465; July 12, 1994), we deferred proposing to regulate non-hazardous volatile liquid low stress pipelines in rural environmentally sensitive areas. We did this because a definition of environmentally sensitive areas did not exist. We stated that we would revisit the issue once we defined such areas.

In 49 USC 60102(j), we are required to survey and assess the effectiveness of EFRDs and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures, and to prescribe regulations on the circumstances under which an operator of a hazardous liquid pipeline facility must use an EFRD or other device. In an EFRD rulemaking (Docket PS–133), we will consider requiring operators to use an EFRD or other procedure or equipment on their pipelines located in USAs to mitigate the extent and impact of a release in the event of a failure.

We must also (49 USC 60102(f)(2)) prescribe, if necessary, additional standards that require the periodic inspection of certain pipelines in USAs using an instrumented internal inspection device or another inspection method that is at least as effective as using the device. RSPA plans to address this mandate in a proposed rule in early CY 2000 (Docket PS–141).

RSPA recently held a public meeting to discuss the need for additional protection in high consequence areas. (Pipeline Safety: Enhanced Safety and Environmental Protection for Gas Transmission and Hazardous Liquid Pipelines in High Consequence Areas, 64 FR 56725; October 21, 1999). We stated that we planned to strengthen current pipeline safety regulations with respect to high consequence areas, including USAs. We will consider increased inspection, enhanced damage prevention, improved emergency response, and other preventive measures for pipelines in these areas.

We recognize that inventories of USAs will have to be updated on a periodic basis to incorporate new information and databases, and to reflect changes in species listings and their locations and the availability of drinking water resources. We intend to identify the locations of USAs through a comprehensive collection and analysis of drinking water and ecological resource data, contingent on the availability of funding and resources. These areas will be mapped using the National Pipeline Mapping System. Operators will have access to these maps through the internet. Operators will then be able to determine which areas of their pipeline intersect USAs. Operators may need to contact resource agencies to obtain additional information on a particular species or drinking water intake.

Existing Protections for Environmentally Sensitive Areas

Currently, pipeline safety regulations on pipeline design, construction, operation, maintenance, emergency and spill response planning generally protect all environmentally sensitive areas, cultural resources, and economic resources. The pipeline design and construction standards specify how pipeline components must be designed, welded together, installed in the ditch, and replaced to ensure the pipeline is constructed in a safe manner. The design and construction standards also cover the design and location of valves and flanges to minimize any potential release. The operation and maintenance standards specify the pipeline's acceptable operating pressure, require personnel training, and require operators to perform inspection, monitoring, and testing to assure that the pipeline continues to operate in a safe manner. Emergency and spill response planning regulations are also in place that require the identification of areas of environmental importance and that operators have response capabilities in place to minimize the release and impact of a pipeline accident on these resources.

In addition to current and intended future pipeline safety regulations, there are many other Federal, state, and local government regulations in place to protect sensitive resources. These include regulations to protect drinking water resources, threatened and endangered species, critical habitats for various species, and spawning areas. Areas have been created and designated to protect and maintain aquatic life, wildlife, various natural resources, and water resources. Permits from various Federal, state, and local agencies are needed before a pipeline can be installed or construction to modify or repair an existing line take place. Environmental reviews and consultations with resource experts are routinely conducting as part of the permit process. RSPA's existing and planned regulations complement these other Federal, state, and local government regulations on sensitive drinking water and ecological resources.

Our Current Proposal for Identifying USAs

We have developed our current proposed process for identifying USAs after extensive consultation with drinking water experts, conservation biologists, government agencies, and other stakeholders. This identification uses a process that begins by designating and assessing environmentally sensitive areas (ESAs), determining which of these ESAs are potentially more susceptible to permanent or long term damage from a hazardous liquid release (areas of primary concern), and finally identifying filtering criteria to determine which areas of primary concern can be reached by a release and sustain permanent or long-term damage. The areas that result are USAs.

RSPA has considered, but has not included, everything listed in the pipeline safety statute and the Presidential memorandum that accompanied the 1996 statute. RSPA has focused on the resources that could suffer permanent or long-term environmental damage if affected by a hazardous liquid release. RSPA has looked beyond the boundaries of the national parks, wetlands, wildlife preservation areas, refuges, etc. to the ecological species and drinking water resources that could suffer irreparable harm if affected by a hazardous liquid release.

Cultural resources, recreational resources, and economic resource areas are not being considered in this NPRM. These areas should be addressed as a separate risk factor and under separate regulations. We also believe that drinking water and ecological resources that do not qualify as USAs should also be addressed as a separate risk factor and under separate regulations. RSPA currently protects these resources under OPA's spill response plan requirements and will consider if additional measures are needed to better protect these areas. RSPA will issue additional regulations to protect these resources if it is determined that additional protections are needed.

The following discusses the areas of primary concern and filtering criteria that RSPA proposes as standards for drinking water and ecological resources.

Drinking Water Resources: Areas of Primary Concern

Drinking water resource areas of primary concern are a subset of all surface intakes and groundwater-based drinking water supplies that provide potable water for domestic, commercial, and industrial users. Drinking water resource areas of primary concern include drinking water resources for permanent communities such as cities and towns, transient communities such as campgrounds, or individual domestic supplies for residential consumption. As defined by the EPA, the drinking water areas of primary concern that we are proposing include the following:

A. *Public Water Systems (PWS):* provide piped water for human consumption to at least 15 service connections or serve an average of at least 25 people for at least 60 days each year. These systems include the sources of the water supplies—i.e., surface or ground. PWS can be community, non-transient non-community, or transient non-community systems, as described below:

1. *Community Water System (CWS):* a PWS that provides water to the same population year round.

2. *Non-transient Non-community Water System (NTNCWS):* a PWS that regularly serves at least 25 of the same people at least six months of the year. Examples of these systems include schools, factories, and hospitals that have their own water supplies.

3. *Transient Non-community Water System (TNCWS):* a PWS that caters to transitory customers in nonresidential areas. Examples of these systems include campgrounds, motels, rest stops, and gas stations.

B. *Wellhead Protection Areas (WHPA):* the surface and subsurface area surrounding a well or well field that supplies a public water system through which contaminants are likely to pass

and eventually reach the water well or well field.

C. *Sole Source Aquifers (SSA):* areas designated by the U.S. Environmental Protection Agency under the Sole Source Aquifer program as the ''sole or principal'' source of drinking water for an area. Such designations are made if the aquifer's ground water supplies 50% or more of the drinking water for an area, and if that aquifer were to become contaminated, it would pose a public health hazard.

Drinking Water Resources: Filtering Criteria

Filtering criteria would be applied to the drinking water areas of primary concern to determine which of these areas are USAs. We believe the following filtering criteria would help identify which drinking water areas of primary concern are necessary for uninterrupted consumption by human populations and could be permanently affected, or have long term damage, from a hazardous liquid release.

A. *Filter Criterion #1*: TNCWS intakes would not be designated as USAs.

B. *Filter Criterion #2*: For CWS and NTNCWS that obtain their water supply primarily from surface water sources, and do not have an adequate alternative source of water, the water intakes would be designated as USAs.

C. *Filter Criterion #3*: For CWS and NTNCWS that obtain their water supply primarily from ground water sources, where the source aquifer is identified as a Class I or Class IIa (as identified in Pettyjohn et al., 1991; EPA Document: EPA/600/2–91/043, August 1991; see Attachment A), and do not have an adequate alternative source of water, the WHPAs for such systems would be designated as USAs.

D. *Filter Criterion #4*: For CWS and NTNCWS that obtain their water supply primarily from ground water sources, where the source aquifer is identified as a Class IIb, III, or Class U (as identified in Pettyjohn et al., 1991; EPA Document: EPA/600/2–91/043, August 1991; see Attachment A,) the public water systems that rely on these aquifers would not be designated as USAs.

E. *Filter Criterion #5*: For CWS and NTNCWS that obtain their water supply primarily from ground water sources, where the source aquifer is identified as a Class I or Class IIa (as identified in Pettyjohn et al., 1991; EPA Document: EPA/600/2–91/043, August 1991; see Attachment A), and the aquifer is designated as a sole source aquifer, an area twice the WHPA would be designated a USA.

Ecological Resources: Areas of Primary Concern

On April 10–11, 1996, RSPA held a public workshop to discuss the elements that should define ecological resources (61 FR 13144, March 26, 1996). Participants concluded that ecological resources should include fish, wildlife, plants, biota and their habitats which may include land, air, and/or water. Examples of ecological resources are provided in a National Oceanic and Atmospheric Administration (NOAA) Guidance Document issued in March 1994 (59 FR 14714). Ecological resources include sensitive fish, wildlife, plant, and habitat resources that are at risk from hazardous liquid spills. These include such resources as breeding, spawning, and nesting areas; early life stage concentration and nursery areas; wintering or migratory areas; rare, threatened, and endangered species locations; and other types of high concentration or sensitive areas.

Ecological areas of primary concern are a subset of all ecological resources. These areas of primary concern are areas that contain ecological resources that are potentially more susceptible to permanent or long term environmental damage.

We are proposing four resource categories as ecological areas of primary concern. These categories are susceptible to permanent or long term ecological damage due to inherent characteristics of rarity, imperilment, or the potential for loss of large segments of an abundant population during periods of migratory concentration.

A. *Areas Containing Critically Imperiled and Imperiled Species and Subtaxa:* These areas contain known occurrences of animal and plant species that have such limited distribution that a hazardous liquid pipeline release could affect a significant percentage of the species population. There are a number of species that are at risk of extinction due to their extremely restricted distribution or limited numbers. These resources are identified, ranked, and inventoried by Natural Heritage Programs and Conservation Data Centers in conjunction with The Nature Conservancy (TNC). Under the TNC approach, each species is assigned a Global (or range-wide) Conservation Status Rank. This rank is based on several specific factors, including the number of known occurrences or populations, number of individuals, health of the population, its extinction potential, whether it is experiencing an increasing or decreasing trend, and if there are known threats to the species. Ecological areas of primary concern include occurrences of species and subtaxa with the following Global Ranks:

1. *Critically imperiled:* These species demonstrate extreme rarity (5 or fewer occurrences or fewer than 1,000 individuals) or extreme vulnerability to extinction due to some natural or man-made factor. There are approximately 1,300 species in the United States which are ranked as critically imperiled globally. Rare or extremely vulnerable subtaxa which are critically imperiled are included in this category, despite the conservation status of the species as a whole.

2. *Imperiled:* These species demonstrate rarity (6 to 20 occurrences or 1,000 to 3,000 individuals) or vulnerability to extinction due to some natural or man-made factor. There are approximately 1,800 species in the United States ranked as imperiled. Rare or vulnerable subtaxa which are imperiled are included in this category, despite the conservation status of the species as a whole.

B. *Areas Containing Federally Listed Threatened and Endangered (T&E) Species:* These areas contain known occurrences of animal and plant species that have been listed and are protected under the Endangered Species Act of 1973, as amended (ESA73) (16 U.S.C. 1531 *et seq.*). A summary of these listed species is published annually as the ''List of Endangered and Threatened Wildlife and Plants'' (50 CFR 17.11 and 17.12). There are currently more than 1,000 listed T&E species in the United States.

The term ''endangered species'' is defined as ''any species which is in danger of extinction throughout all or a significant portion of its range'' (16 U.S.C. 1532). The term ''threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range'' (16 U.S.C. 1532). The term species includes species, subspecies, and distinct vertebrate populations.

In addition, a species that has been proposed or is a candidate to become a T&E species will become an ecological area of primary concern upon its final listing as a T&E species in the **Federal Register**.

C. *Areas Containing Depleted Marine Mammal Species:* These areas contain known occurrences of depleted species identified and protected under the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 *et seq.*). The term ''depleted'' refers to marine mammal species that are listed

as T&E or are below their optimum sustainable populations (16 U.S.C. 1362). The term ''species'' includes species, subspecies, or population stocks. There are currently 18 species listed as ''depleted'' under the MMPA. Eleven of these species are also listed as endangered and three of these species are listed as threatened under the ESA73.

The term ''marine mammal'' is defined as ''any mammal which is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea), or primarily inhabits the marine environment (such as the polar bear)'' (16 U.S.C. 1362). The order Sirenia includes manatees, the order Pinnipedia includes seals, sea lions, and walruses, and the order Cetacea includes dolphins, porpoises, and whales.

D. *Areas Containing a Large Percentage of the World's Population of a Migratory Waterbird Species:* These areas contain very high concentrations of the world's population of a species for a short time. An example would be those areas of the Delaware Bay where a major portion of the world population of red knot (a shorebird species) stop-over to feed during migration.

Two programs of international significance are responsible for identifying and delimiting areas where significant populations of migratory waterbirds congregate during critical periods. The first program, the Western Hemisphere Shorebird Reserve Network (WHSRN), ranks migratory shorebird concentration areas into four different categories on the basis of biological criteria. These four categories are:

1. Hemispheric reserves—these areas host at least 500,000 shorebirds annually or 30% of a species flyway population;

2. International reserves—these areas host 100,000 shorebirds annually or 15% of a species flyway population;

3. Regional reserves—these areas host 20,000 shorebirds annually or 5% of a species flyway population; and

4. Endangered species reserves—these areas are critical to the survival of endangered species and no minimum number of birds is required.

Eighteen WHSRN sites have been established in the United States (Table 1).

A second program, The Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar), is dedicated to identifying globally critical wetland areas supporting migratory waterfowl. The establishment of a Ramsar site (Ramsar Articles, 1996) includes the following specific criteria for waterfowl:

1. A wetland area that regularly supports 20,000 waterfowl, or

2. A wetland area that regularly supports substantial numbers of individuals from particular groups of waterfowl, indicative of wetland values, productivity, or diversity, or

3. Where data on populations are available, a wetland area that regularly supports 1% of the individuals in a population of one species or subspecies of waterfowl.

There are a total of 17 Ramsar sites in the United States. See table 1 in the appendix to this document.

Additional information on the Ramsar and WHSRN sites is available on the internet or from the U.S. Fish and Wildlife Service, Office of International Affairs.

Ecological Resources: Filter Criteria

Filter criteria would be applied to the ecological resource areas of primary concern to determine which are most susceptible to permanent or long term environmental damage from a hazardous liquid pipeline spill. These resources would be ecological USAs.

We are proposing three ecological filter criteria that are consistent with current trends in conservation ecology to identify areas with critically imperiled species, multi-species protection sites, and migratory waterbird concentrations. The three criteria would be applied in a multi-tiered process where all ecological areas of primary concern receive repetitive consideration for USA status. For example, an ecological area of primary concern is first subjected to filter criterion 1, areas with critically imperiled species, and may be designated an USA at this point. If the ecological area of primary concern does not meet filter criterion 1, it then receives consideration under filter criterion 2, multi-species protection areas, and may be designated an USA at this point. If the ecological area of primary concern does not meet filter criterion 2, it receives consideration under filter criterion 3, migratory waterbird concentration areas, and may be designated an USA at this point. If the ecological area of primary concern does not meet filter criterion 3, it remains an ecological area of primary concern. All ecological areas of primary concern must be periodically reviewed to consider changes in resource information or status. An ecological area of primary concern would become a USA once it meets one of the filtering criteria.

A. Filter Criterion 1: Areas With Critically Imperiled Species

Filter criterion 1 selects those ecological areas of primary concern that contain viable occurrences of species or subtaxa designated as critically imperiled globally to be USAs. These species or subtaxa demonstrate extreme rarity or extreme vulnerability to extinction due to some natural or man-made factor. They typically have five or fewer occurrences or fewer than 1,000 individuals globally. In some cases, species or subtaxa may be identified as critically imperiled because they are subject to an extreme threat of extinction due to factors other than low number of occurrences or individuals.

The critically imperiled designation includes a wide variety of plant and animal species and subtaxa. It includes approximately 64% of the listed threatened and endangered species and 53% of those species currently designated by the Departments of Interior and Commerce as proposed or as candidates for listing under ESA73. This filter criterion also selects an additional number of plant and animal species and subtaxa not designated under ESA73. All ecological areas of primary concern meeting this criterion would be considered USAs. Ecological areas of primary concern that do not meet filter criterion 1 would then be considered under filter criteria 2 and 3.

B. Filter Criterion 2: Multi-species Protection Areas

Filter criterion 2 selects the ecological areas of primary concern that form multi-species assemblages. Multi-species assemblages are defined as areas where three or more different critically imperiled or imperiled species, threatened or endangered species, depleted marine mammals, or migratory waterbird concentrations co-occur. These areas are valuable since they often represent unique ecosystems. Multi-species protection areas also protect a greater number of sensitive resources per site location.

C. Filter Criterion 3: Migratory Waterbird Concentration Areas

Filter criterion 3 selects the ecological areas of primary concern that are designated Ramsar sites. Filter criterion 3 also selects the ecological areas of primary concern that are WHSRN sites ranked as hemispheric, international, or endangered species reserves. These areas are valuable since significant populations of migratory waterbirds congregate in these areas during critical periods. Relatively common species may be at risk at such sites. In some

cases, as much as 80% of the entire North American population of a particular species may occur at one of these sites during critical concentration periods.

Pilot Test

RSPA published a Notice of Intent to Pilot Test (64 FR 38173) on July 15, 1999. This notice announced the commencement of a pilot test to determine if the definition described in this NPRM could be used to identify and locate unusually sensitive drinking water and ecological resources using available data from government agencies and environmental organizations. RSPA is conducting the pilot test using the States of Texas, California, and Louisiana to test this proposed USA definition due to the large number of hazardous liquid pipelines in these states and the considerable drinking water and ecological resources that exist in these states. RSPA and others will use the results to evaluate whether the proposed definition identifies the majority of unusually sensitive areas and whether environmental data is accessible and appropriate to support the proposed definition. The results of this pilot test will be used to create an industry guidance document on unusually sensitive areas.

In this pilot test RSPA is:

- Identifying pertinent drinking water data that have been created and maintained by Federal or state government agencies, environmental groups, or private organizations. This includes data on public drinking water systems, aquifers, sole source aquifers, wellhead protection areas, alternative drinking water resources, and aquifer vulnerabilities.
- Identifying pertinent ecological data that have been created and maintained by Federal or state government agencies, environmental groups, or private organizations. This includes data on threatened and endangered species, critically imperilled and imperilled species, depleted marine mammal species, and areas containing a large percentage of the world's population of a migratory waterbird species.
- Identifying data on land features, such as the location of wetlands, rivers, transportation networks, and water routes (including flow direction).
- Obtaining, where possible, all pertinent drinking water, ecological, and land feature data. All problems encountered in gathering the data are being documented.
- Determining if the obtained data can be used with the proposed USA definition to identify and locate USAs. This includes reviewing the data for accuracy, attributes, format, restrictions on use, and determining if the resources and features were mapped with sufficient precision.
- Processing the data, using a geographic information system (GIS), according to the proposed USA definition. Identifying all problems encountered in processing the data.
- Comparing the USA pilot results to other preservation area identification efforts, where possible, and to all threatened and endangered specie areas.

RSPA will publish a Notice of Availability in the **Federal Register** and put the results of this pilot test on the OPS's Web Page: http://ops.dot.gov for review and comment as soon as the results are available. We currently expect to have the results in April 2000.

Technical Review

Drinking water and ecological resource experts will review the pilot test to determine whether the results identify the majority of unusually sensitive areas within the three pilot states. These experts will come from the Departments of Interior, Agriculture, and Commerce, the Environmental Protection Agency, state Nature Conservancies and Heritage Programs. We will also use experts on drinking water and ecological resources from state agencies, including the Texas Railroad Commission, Texas Parks and Wildlife, the Louisiana Department of Environmental Quality, the Louisiana Department of Wildlife and Fisheries, the California Department of Fish and Game, and the California State Fire Marshals Office.

These peer reviewers will help to identify other data sets that might be utilized and other resources that might be considered, and to improve the capability of the proposed USA definition to identify the majority of USAs within the three states. RSPA will publish a Notice of Availability in the **Federal Register** and the results of this peer review on OPS's Web Page: http://ops.dot.gov as soon as the results are available.

RSPA will also present this NPRM and the USA pilot results to the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). The THLPSSC is responsible for reviewing proposed federal hazardous liquid pipeline safety standards and reporting on their feasibility, reasonableness, and practicability. Representatives on the THLPSSC include the Minerals Management Service, City of Fredericksburg Virginia, U.S. Department of Agriculture, U.S. Department of Commerce, Virginia State Corporation Commission, Environmental Defense Fund, The Nature Conservancy, Kenai Peninsula, Atlantic Consultants, Southwest Research Institute, Buckeye Pipe Line, Lakehead Pipe Line, Kinder Morgan Energy Partners, and Mobil Pipe Line.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Policies and Procedures

The Office of Management and Budget (OMB) does not consider this proposed rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). Therefore, OMB has not reviewed this rulemaking document. DOT does not consider this proposed rulemaking significant under its regulatory policies and procedures (44 FR 11034; February 26, 1979).

This proposed definition will have no cost impact on the pipeline industry or the public because it is only a definition. It requires no immediate action on the part of pipeline operators. Potentially, it could impact current or future regulations but this would require specific rulemaking action. Because there is no accompanying action requiring anything of pipeline operators, there is no need to examine the cost impact. If future rulemakings require that operators take any specific actions on pipelines that are in unusually sensitive areas, then RSPA will perform a cost-benefit analysis to determine any potential impact. Because operators are taking no actions there are also no specific benefits attributable to this proposed definition.

B. Regulatory Flexibility Act

The proposed rule would not impose additional requirements on pipeline operators, including small entities that operate regulated pipelines. Based on the above information showing that there is no economic impact of this proposed rulemaking, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this proposed rulemaking would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13084

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments.'' Because the proposed rules would not significantly or uniquely affect the Indian tribal governments, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Paperwork Reduction Act

This proposed rulemaking contains no information collection that is subject to review by OMB under the Paperwork Reduction Act of 1995.

E. Unfunded Mandates Reform Act of 1995

This proposed rulemaking would 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.

F. National Environmental Policy Act

We have analyzed the proposed rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) The information and analysis provided in the Environmental Assessment demonstrate that the proposed action to define USAs in Part 195.2 and 195.6 will not have any significant environmental impact. However, as discussed in the Environmental Assessment, RSPA is considering several rulemakings that will provide additional protection for the USAs that will be identified using this definition. At the time these rulemakings are proposed, RSPA will perform Environmental Assessments to determine the impacts on the environment of these new requirements. The Environmental Assessment document is available for review in the docket.

G. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize ''double zero'' not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 Problem. This notice of proposed rulemaking does not propose business process changes or require modifications to computer systems. Because this notice apparently does not affect the ability of organizations to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the regulatory definition proposed in this notice.

H. Executive Order 12612

This action would not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), RSPA has determined that the proposed regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 195

Anhydrous Ammonia, Carbon dioxide, Hazardous liquids, Petroleum, Pipeline Safety.

In consideration of the foregoing, RSPA hearby proposes to amend 49 CFR Part 195 as follows:

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. Section 195.2 would be revised by adding the following definition in alphabetical order to read as follows:

§ 195.2 Definitions.

* * * * *

Unusually sensitive area (USA) means a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release, as identified under § 195.6.

3. Section 195.6 would be added to read as follows:

§ 195.6 Unusually Sensitive Areas (USAs).

As used in this part, an USA means a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release.

(a) For drinking water resources: (1) The water intake for a Community Water System (CWS), as defined under § 195.6(c), or a Non-transient Non-community Water System (NTNCWS), as defined under § 195.6(c), that obtains its water supply primarily from a surface water source and does not have an adequate alternative source of water,

(2) The Wellhead Protection Area (WHPA) for a CWS, as defined under § 195.6(c), or a NTNCWS that obtains its water supply from a Class I or Class IIA aquifer, as defined under § 195.6(c), and does not have an adequate alternative source of water, or

(3) An area twice the WHPA for a CWS or a NTNCWS that obtains its water supply primarily from a sole source Class I or Class IIa aquifer and does not have an alternative source of water.

(b) For ecological resources: (1) An area containing critically imperiled species, as defined under § 195.6(c),

(2) A multi-species protection area, as defined under § 195.6(c), or

(3) A migratory waterbird concentration area, as defined under § 195.6(c).

(c) As used in this part—*Class I Aquifer* means an aquifer that is surficial or shallow, permeable, and is highly vulnerable to contamination. A Class I aquifer may be a:

(1) Unconsolidated Aquifer (Class Ia) that consists of surficial, unconsolidated, and permeable alluvial, terrace, outwash, beach, dune and other similar deposits. These aquifers generally contain layers of sand and gravel that, commonly, are interbedded to some degree with silt and clay. Not all Class Ia aquifers are important water-bearing units, but they are likely to be both permeable and vulnerable. The only natural protection of these aquifers is the thickness of the unsaturated zone and the presence of fine-grained material.

(2) Soluble and Fractured Bedrock Aquifer (Class Ib). Lithologies in this class include limestone, dolomite, and, locally, evaporitic units that contain documented karst features or solution channels, regardless of size. Generally these aquifers have a wide range of permeability. Also included in this class are sedimentary strata, and metamorphic and igneous (intrusive and extrusive) rocks that are significantly faulted, fractured, or jointed. In all cases groundwater movement is largely controlled by secondary openings. Well yields range widely, but the important feature is the potential for rapid vertical and lateral ground water movement along preferred pathways, which result in a high degree of vulnerability.

(3) Semiconsolidated Aquifer (Class Ic) that generally contains poorly to moderately indurated sand and gravel that is interbedded with clay and silt. This group is intermediate to the unconsolidated and consolidated end members. These systems are common in the Tertiary age rocks that are exposed throughout the Gulf and Atlantic coastal states. Semiconsolidated conditions also arise from the presence of intercalated clay and caliche within primarily unconsolidated to poorly consolidated

units, such as occurs in parts of the High Plains Aquifer.

(4) Covered Aquifer (Class Id) that is any Class I aquifer overlain by less than 50 feet of low permeability, unconsolidated material, such as glacial till, lacustrian, and loess deposits.

Class IIa aquifer means a Higher Yield Bedrock Aquifer that is consolidated and is moderately vulnerable to contamination. These aquifers generally consist of fairly permeable sandstone or conglomerate that contain lesser amounts of interbedded fine grained clastics (shale, siltstone, mudstone) and occasionally carbonate units. In general, well yields must exceed 50 gallons per minute to be included in this class. Local fracturing may contribute to the dominant primary porosity and permeability of these systems.

Community Water System (CWS) means a public water system that provides water to the same population year round.

Critically imperiled species means a species of extreme rarity, based on The Nature Conservancy's Global Conservation Status Rank. These species have 5 or fewer occurrences or fewer than 1,000 individuals, or are extremely vulnerable to extinction due to some natural or man-made factor.

Depleted Marine Mammal species means a species that has been identified and is protected under the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 *et seq.*). The term ''depleted'' refers to marine mammal species that are listed as threatened or endangered, or are below their optimum sustainable populations (16 U.S.C. 1362). The term ''marine mammal'' means ''any mammal which is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea), or primarily inhabits the marine environment (such as the polar bear)'' (16 U.S.C. 1362). The order Sirenia includes manatees, the order Pinnipedia includes seals, sea lions, and walruses, and the order Cetacea includes dolphins, porposes, and whales.

Imperiled species means a rare species, based on The Nature Conservancy's Global Conservation Status Rank. These species have 6 to 20 occurrences or 1,000 to 3,000 individuals, or are vulnerable to extinction due to some natural or man-made factor.

Migratory waterbird concentration area means a designated Ramsar site or Western Hemisphere Shoreline Reserve Network site ranked as hemispheric, international, or endangered species reserve.

Multi-species protection area means an area where three or more different critically imperiled or imperiled species, threatened or endangered species, depleted marine mammals, or migratory waterbird concentrations co-occur.

Non-transient Non-community Water System (NTNCWS) means a public water system that regularly serves at least 25 of the same people at least six months of the year. Examples of these systems include schools, factories, and hospitals that have their own water supplies.

Public Water System (PWS) means a system that provides piped water for human consumption to at least 15 service connections or serves an average of at least 25 people for at least 60 days each year. These systems include the sources of the water supplies—i.e., surface or ground. PWS can be community, non-transient non-community, or transient non-community systems.

Ramsar site means a site that has been designated under The Convention on Wetlands of International Importance Especially as Waterfowl Habitat program. Ramsar sites are globally critical wetland areas that support migratory waterfowl. These include wetland areas that regularly support 20,000 waterfowl; wetland areas that regularly support substantial numbers of individuals from particular groups of waterfowl, indicative of wetland values, productivity, or diversity; or wetland areas that regularly support 1% of the individuals in a population of one species or subspecies of waterfowl.

Sole Source Aquifer (SSA) means an area designated by the U.S. Environmental Protection Agency under the Sole Source Aquifer program as the ''sole or principal'' source of drinking water for an area. Such designations are made if the aquifer's ground water supplies 50% or more of the drinking water for an area, and if that aquifer were to become contaminated, it would pose a public health hazard.

Species means species, subspecies, population stocks, or distinct vertebrate populations.

Threatened and Endangered Species (T&E) means an animal or plant species that has been listed and is protected under the Endangered Species Act of 1973, as amended (ESA73) (16 U.S.C. 1531 *et seq.*). ''Endangered species'' is defined as ''any species which is in danger of extinction throughout all or a significant portion of its range'' (16 U.S.C. 1532). ''Threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range'' (16 U.S.C. 1532).

Transient Non-Community Water System (TNCWS) means a public water system that caters to transitory customers in nonresidential areas. Examples of these systems include campgrounds, motels, rest stops, and gas stations.

Wellhead Protection Area (WHPA) means the surface and subsurface area surrounding a well or well field that supplies a public water system through which contaminants are likely to pass and eventually reach the water well or well field.

Western Hemisphere Shorebird Reserve Network (WHSRN) site means an area that contains migratory shorebird concentrations and has been designated as a hemispheric reserve, international reserve, regional reserve, or endangered species reserve. Hemispheric reserves host at least 500,000 shorebirds annually or 30% of a species flyway population. International reserves host 100,000 shorebirds annually or 15% of a species flyway population. Regional reserves host 20,000 shorebirds annually or 5% of a species flyway population. Endangered species reserves are critical to the survival of endangered species and no minimum number of birds is required.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

Appendix

Note: This appendix will not appear in the Code of Federal Regulations.

TABLE 1.—CURRENTLY RECOGNIZED MIGRATORY WATERBIRD PROTECTION AREAS IN THE U.S.

Site name	State	Size (ha)	Location coordinates
Ramsar Sites:			
Ash Meadows National Wildlife Refuge	Nevada	9,509	36°25′N 116°20′W
Bolinas Lagoon	California	445	37°55′N 112°41′W

TABLE 1.—CURRENTLY RECOGNIZED MIGRATORY WATERBIRD PROTECTION AREAS IN THE U.S.—Continued

Site name	State	Size (ha)	Location coordinates
Cache-Lower White Rivers	Arkansas	81,376	34°40′N 091°11′W
Cache River-Cypress Creek Wetlands	Illinois	24,281	37°13′N 089°08′W
Caddo Lake	Texas	8,382	32°45′N 094°08′W
Catahoula Lake	Louisiana	12,150	31°30′N 092°06′W
Chesapeake Bay Estuarine Complex	Virginia	45,000	38°00′N 076°20′W
Cheyenne Bottoms State Game Area	Kansas	8,036	38°29′N 098°40′W
Connecticut River Estuary & Tidal Wetland Complex	Connecticut	6,484	41°15′N 072°18′W
Delaware Bay Estuary	Delaware and New Jersey	51,252	39°11′N 075°14′W
Edwin B Forsythe National Wildlife Refuge	New Jersey	13,080	39°36′N 074°17′W
Everglades National Park MR	Florida	566,143	25°00′N 080°55′W
Horicon Marsh	Wisconsin	12,911	43°30′N 088°38′W
Izembek Lagoon National Wildlife Refuge	Alaska	168,433	55°45′N 162°41′W
Okefenokee National Wildlife Refuge	Georgia, Florida	159,889	30°49′N 082°20′W
Pelican Island National Wildlife Refuge	Florida	1,908	27°48′N 080°25′W
Sand Lake National Wildlife Refuge	South Dakota	8,700	45°45′N 098°15′W
WHSRN Sites:			
Copper River Delta	Alaska.		
Kachemak Bay	Alaska.		
Mono Lake	California.		
Grasslands	California.		
San Francisco Bay	California.		
Delaware Bay	Delaware, New Jersey.		
American Falls	Idaho.		
Cheyenne Bottoms	Kansas.		
Quivira	Kansas.		
Barrier Islands	Maryland, Virginia.		
Benton Lake	Montana.		
Stillwater	Nevada.		
Salt Plains	Oklahoma.		
Cape Roman	South Carolina.		
Bolivar Flats	Texas.		
Brazoria Refuge Complex	Texas.		
Great Salt Lake	Utah.		
Gray's Harbor	Washington.		

Attachment A

Recommended Data Source: EPA Report 600/2–91/043. Regional Assessment of Aquifer Vulnerability and Sensitivity in the Conterminous United States. Office of Research and Development. Washington, DC. 319pp.

The following information was obtained from pages 6–8 of the above report:

Class I Aquifers (Surficial or Shallow, Permeable Units; Highly Vulnerable to Contamination)

Unconsolidated Aquifers (Class Ia)

Class Ia aquifers consist of surficial, unconsolidated, and permeable alluvial, terrace, outwash, beach, dune and other similar deposits. These units generally contain layers of sand and gravel that, commonly, are interbedded to some degree with silt and clay. Not all deposits mapped as Class Ia are important water-bearing units, but they are likely to be both permeable and vulnerable. The only natural protection of aquifers of this class is the thickness of the unsaturated zone and the presence of fine-grained material.

Soluble and Fractured Bedrock Aquifers (Class Ib)

Lithologies in this class include limestone, dolomite, and, locally, evaporitic units that contain documented karst features or solution channels, regardless of size. Generally these systems have a wide range in permeability. Also included in this class are sedimentary strata, and metamorphic and igneous (intrusive and extrusive) rocks that are significantly faulted, fractured, or jointed. In all cases groundwater movement is largely controlled by secondary openings. Well yields range widely, but the important feature is the potential for rapid vertical and lateral ground water movement along preferred pathways, which result in a high degree of vulnerability.

Semiconsolidated Aquifers (Class Ic)

Semiconsolidated systems generally contain poorly to moderately indurated sand and gravel that is interbedded with clay and silt. This group is intermediate to the unconsolidated and consolidated end members. These systems are common in the Tertiary age rocks that are exposed throughout the Gulf and Atlantic coastal states. Semiconsolidated conditions also arise from the presence of intercalated clay and caliche within primarily unconsolidated to poorly consolidated units, such as occurs in parts of the High Plains Aquifer.

Covered Aquifers (Class Id)

This class consists of any Class I aquifer that is overlain by less than 50 feet of low permeability, unconsolidated material, such as glacial till, lacustrian, and loess deposits.

Class II Aquifers (Consolidated Bedrock Aquifers; Moderately Vulnerable)

Higher Yield Bedrock Aquifers (Class IIa)

These aquifers generally consist of fairly permeable sandstone or conglomerate that contain lesser amounts of interbedded fine grained clastics (shale, siltstone, mudstone) and occasionally carbonate units. In general, well yields must exceed 50 gpm to be included in this class. Locally fracturing may contribute to the dominant primary porosity and permeability of these systems.

Lower Yield Bedrock Aquifers (Class IIb)

In most cases, these aquifers consist of sedimentary or crystalline rocks. Most commonly, lower yield systems consist of the same clastic rock types present in the higher yield systems, but in the former case grain size is generally smaller and the degree of cementation or induration is greater, both of which lead to a lower permeability. In many existing and ancient mountain regions, such as the Appalachians (Blue Ridge and Piedmont), the core consists of crystalline rocks that are fractured to some degree. Well yields are commonly less than 50 gpm, although they may be larger in valleys than on interstream divides.

Covered Bedrock Aquifers (Class IIc)

This group consists of Class IIa and IIb aquifers that are overlain by less than 50 feet of unconsolidated material of low

permeability, such as glacial till, lacustrian, or loess deposits. It is assumed that most Class V wells are relatively shallow and, therefore, 50 feet or less of fine grained cover could reduce but not necessarily eliminate the vulnerability of underlying Class II systems.

Class III (Consolidated or Unconsolidated Aquifers That Are Overlain by More Than 50 Feet of Low Permeability Material; Low Vulnerability)

Aquifers of this type are the least vulnerable of all the classes because they are naturally protected by a thick layer of fine grained material, such as glacial till or shale. Examples include parts of the Northern Great Plains where the Pierre Shale of Cretaceous age crops out over thousands of square miles and is hundreds of feet thick. In many of the glaciated states, till forms an effective cover over bedrock or buried outwash aquifers, and elsewhere alternating layers of shale, siltstone, and fine grained sandstone insulate and protect the deeper major water bearing zones * * *

Class U (Undifferentiated Aquifers)

This classification is used where several lithologic and hydrologic conditions are present within a mappable area. Units are assigned to this class because of constraints of mapping scale, the presence of undelineated members within a formation or group, or the presence of nonuniformly occurring features, such as fracturing. This class is intended to convey a wider range of vulnerability than is usually contained within any other single class.

Subclass V (Variable Covered Aquifers)

The modifier ''v'', such as Class IIa-v, is used to describe areas where an undetermined or highly variable thickness of low permeability sediments overlie the major water bearing zone. To provide the largest amount of information, the underlying aquifer was mapped as if the cover were absent, and the ''v'' designation was added to the classification. The ''v'' indicates that a variable thickness of low permeability material covers the aquifer and, since the thickness of the cover, to a large degree, controls vulnerability, this aspect is undefined.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[NHTSA–99–6676]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision to Grant Exemption

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

ACTION: Proposed decision.

SUMMARY: This proposed decision responds to a petition filed by DeTomaso Automobiles, Ltd. (DeTomaso) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years 2000 and 2001, and that, for DeTomaso, lower alternative standards be established. In this document, NHTSA proposes that the requested exemption be granted to DeTomaso and that alternative standards of 22.0 mpg be established for MY's 2000 and 2001.

DATES: Comments on this proposed decision must be received on or before January 31, 2000.

ADDRESSES: Comments on this proposal must refer to the docket number and notice number in the heading of this notice and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Sanjay Patel, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Mr. Patel's telephone number is: (202) 366–0307.

SUPPLEMENTARY INFORMATION:

Statutory Background

Pursuant to 49 U.S.C. section 32902(d), NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

(1) Technological feasibility.

(2) Economic practicability.

(3) The effect of other Federal motor vehicle standards on fuel economy, and

(4) The need of the United States to conserve energy.

The statute permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) a separate standard for each exempted manufacturer; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers.

Background Information on DeTomaso

DeTomaso Automobiles, Ltd. is a Delaware Corporation under common ownership with DeT. Auto Srl., an Italian corporation that produces DeTomaso automobiles in Italy and distributes them worldwide. These DeTomaso automobiles are produced under a license granted by DeTomaso Modena SpA., an Italian corporation owned by Alejandro DeTomaso. DeT Auto Srl. and DeTomaso Automobiles Ltd. produce fewer than 10,000 cars worldwide each year and are not owned by, or under common control with, any other auto company.

The DeTomaso marque has always provided high performance through technology and weight reduction. DeTomaso vehicles were last exported to the United States in the late 1970's. The number of vehicles imported annually at that time was quite small. DeTomaso traditionally produces fewer than 2000 vehicles each year.

For the 2000 and 2001 model years, DeTomaso's product-line for the U.S. market consists of the DeTomaso Mangusta, a two-seat convertible sports car powered by a 4.6 liter Ford V–8. This model will be the only vehicle imported by DeTomaso and the company projects that it will import 300 vehicles for MY 2000 and 500 vehicles for MY 2001. These projected sales volumes are consistent with its status as a low volume importer.

The DeTomaso Petition

NHTSA's regulations on low volume exemptions from CAFE standards state that petitions for exemption are submitted ''not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown.'' (49 CFR 525.6(b).)

NHTSA received a joint petition from DeTomaso Automobiles Ltd. (DeTomaso) on June 20, 1998, seeking exemption from the passenger automobile fuel economy standards for MYs 2000–2001. This joint petition was filed less than 24 months before the beginning of MYs 2000 and 2001 and was therefore untimely under 49 C.F.R. 526.6(b). DeTomaso indicates that its decision to enter the U.S. market for MY