

2. Section 63.58 is amended by revising paragraphs (a)(1), removing paragraph (a)(2), redesignating existing paragraph (a)(3) as the new paragraph (a)(2), and revising the note in paragraph (b), to read as follows:

§ 63.58 Exemption.

(a) * * *

(1) Any incorporated or unincorporated place of 10,000 inhabitants or more, or any part thereof;

* * *

(b) * * *

Note: The Census Bureau has defined some incorporated places of 2,500 inhabitants or more as "extended cities." Such cities consist of an urban part and a rural part. If the proposed service area includes a rural part of an extended city, but otherwise includes no territory described in paragraph (a)(1) or (2) of this section, an exemption shall apply.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-115; Notice 2]

RIN-2137 AB53

Gas Pipelines Operating Above 72 Percent of SMYS

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: RSPA's gas pipeline safety regulations allow certain steel pipelines put into service before the regulations were issued to be operated at pressures that result in a hoop stress higher than 72 percent of the specified minimum yield strength (SMYS) of the pipe. This is the highest hoop stress at which all other steel pipelines subject to the regulations may be operated. Because of accidents involving time-dependent defects on a few gas pipelines operating above 72 percent of SMYS and a National Transportation Safety Board (NTSB) recommendation that RSPA require reductions of hoop stress in those lines, RSPA published an advance notice of proposed rulemaking to invite public participation in determining an appropriate course of action. RSPA has concluded that NTSB's recommended hoop stress reductions would not

contribute significantly to pipeline safety. The advance notice is, therefore, withdrawn.

FOR FURTHER INFORMATION CONTACT:

L. M. Furrow, (202) 366-2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366-5048, regarding copies of this notice or other material in the docket that is referenced in this notice.

SUPPLEMENTARY INFORMATION:

Background

A RSPA regulation that limits the maximum allowable operating pressure (MAOP) of steel or plastic gas pipelines (49 CFR 192.619) contains a grandfather exception (§ 192.619(c)). This exception applies to pipelines in satisfactory condition that were put into service before the MAOP limitations were adopted. For these grandfathered lines, operators may set MAOP at the highest actual operating pressure the pipeline experienced during the 5 years before July 1, 1970, or, for offshore gathering lines, before July 1, 1976, if the operator finds the pipeline is in satisfactory condition considering its operating and maintenance history. (The grandfather exception has practical effect only for pipelines in Class 1 locations (essentially rural or offshore locations, as defined by § 192.5) because of the additional limits on MAOP that § 192.611 places on pipelines in more populated locations (Classes 2-4).)

In its proposed form, § 192.619 would have required operators to lower the pressure in many existing Class 1 pipelines. (35 FR 5486; April 2, 1970). DOT decided, however, that it lacked evidence that pressure reduction would materially increase the safety of these lines. Thus, it adopted the grandfather exception for them. (35 FR 13248; August 19, 1970). As a result, grandfathered lines may be operated with hoop stresses higher than § 192.619 permits for new pipelines in Class 1 locations. For new steel Class 1 pipelines, the maximum hoop stress allowed is 72 percent of SMYS.

In 1985 and 1986, NTSB investigated two corrosion-related accidents on two grandfathered lines near Beaumont and Lancaster, Kentucky. The pipelines were operated by the Texas Eastern Gas Pipeline Company at stresses above 72 percent of SMYS. In its report on the investigations (NTSB/PAR-87-1; February 18, 1989), NTSB recommended that RSPA repeal the provision that allows pipelines to be operated above 72 percent of SMYS. (Recommendation P-87-009). The primary basis for this recommendation was NTSB's judgment that it is not sound engineering practice

to operate old pipelines at a hoop stress higher than Part 192 permits for new pipelines. A further rationale was NTSB's belief that if the MAOP of the pipelines had been lowered to no more than 72 percent of SMYS, the accidents probably would not have occurred until a later date, and in the Lancaster case, probably not before Texas Eastern had time to replace the damaged segment. (Texas Eastern had begun a rehabilitation program on the Lancaster line about a year before the corrosion-related accident occurred.)

In addition to the NTSB investigations, RSPA and the Kentucky Public Service Commission jointly formed a task force to inquire into the Lancaster and Beaumont accidents. This task force also examined two other contemporaneous accidents on Texas Eastern's pipelines in Kentucky that were operating above 72 percent of SMYS. One of these accidents was caused by a material defect; the other by construction errors. Because all the pipelines involved were grandfathered, the task force recommended that RSPA study the need to limit the operating hoop stress of grandfathered pipelines to 72 percent of SMYS. (See "Texas Eastern Gas Pipeline Company Operations and Maintenance Procedures Evaluation," dated November 1986.)

Heeding the task force's recommendation, RSPA researched the safety consideration s pertinent to the operation of pipelines above 72 percent of SMYS, and produced a report titled, "A Safety Evaluation of Gas Pipelines Operating Above 72 Percent of SMYS," dated August 1987. This report identified two operators as having the large majority of grandfathered lines that operate above 72 percent of SMYS: Texas Gas Transmission Corporation and Texas Eastern Gas Pipeline Company (now a subsidiary of the Panhandle Eastern Corporation).

According to the report, since 1970 the incident rate on Texas Gas's and Texas Eastern's grandfathered lines operating above 72 percent of SMYS ranged from 1/10 to 1/2 the incident rate on lines those companies operate below 72 percent of SMYS. Although the report does not explain this variation, testimony from company representatives at an advisory committee meeting (discussed below) sheds light on it.

Texas Eastern attributed the safety record of its grandfathered lines (about 4,200 miles) to two things: an aggressive inspection and maintenance program; and post-construction hydrostatic testing to at least 100 percent of SMYS. (In contrast, the minimum test level

required by Part 192 for new Class 1 steel pipelines operating at 72 percent of SMYS is 79.2 percent of SMYS.) Texas Eastern outlined its maintenance program as: (1) Intelligent pig inspection, (2) visual inspection and removal of anomalies detected by the pig, and (3) selective high pressure hydrostatic retesting to validate the pig inspection and ensure the integrity of replaced pipe.

Like Texas Eastern, Texas Gas attributed the safety record of its grandfathered lines (about 1,183 miles) to a strong maintenance program, which includes (1) reconditioning, (2) replacement of pipe where necessary, and (3) hydrostatic retesting.

The research report further states that the primary factors contributing to the failure of pipelines operating between 72 and 80 percent of SMYS are the number and size of defects present and their rate of growth. Because of the overriding importance of these factors, RSPA concluded that lowering operating hoop stress to 72 percent of SMYS, as NTSB recommended, would increase the time to failure only slightly, and would not prevent failures. RSPA concluded in the report that the margin between operating pressure and hydrostatic test pressure, rather than an operating hoop stress limit of 72 percent of SMYS, provides primary protection against leaks or ruptures caused by growth of time-dependent defects.

All grandfathered lines operating above 72 percent of SMYS that RSPA examined in its research project had been pressure tested to a level above 1.1 times their operating pressure. This test pressure is the minimum that Part 192 requires for new gas pipelines in Class 1 locations. So the grandfathered lines RSPA examined had been adequately tested by current standards.

RSPA presented the research report for consideration by the Technical Pipeline Safety Standards Committee (TPSSC) at a meeting on September 22, 1987. The TPSSC is RSPA's gas pipeline safety advisory committee, comprised of individuals who are experienced in the safety regulation of gas pipeline transportation or who are technically qualified to evaluate gas pipeline safety standards. No consensus was reached on the report, although there was much discussion about whether grandfathered lines should be subjected to additional integrity testing. This discussion came about because in the report RSPA recognized additional hydrostatic testing as a way to reduce the likelihood of failure in service from the growth of time-dependent defects. Then, on September 13, 1988, the TPSSC again took up the issue of grandfathered lines,

this time voting 11 to 1 to disapprove a proposal to repeal the grandfather exception. The TPSSC's objections centered on the insufficiency of data showing that grandfathered lines are unsafe, the need to determine the cost of repeal, and the need to justify repeal in light of RSPA's research report.

Still RSPA remained concerned about the merits of NTSB's recommendation, particularly because it thought grandfathered lines operating above 72 percent of SMYS may provide somewhat less protection against external loads that could cause pipe failure, such as landslides or earthquakes, than similar lines operating at lower stress levels. Consequently, RSPA published an advance notice of proposed rulemaking (ANPRM) (54 FR 50780; Dec. 11, 1989) to request public comments on three alternative courses of action: (1) Repeal the grandfather exception with respect to pipelines operating above 72 percent of SMYS; (2) require integrity testing of pipelines operating above 72 percent of SMYS; or (3) leave the grandfather exception as is.

The TPSSC discussed the ANPRM at a meeting on April 4, 1990. Some members expressed doubt that the safety problem NTSB perceived really exists. Others indicated that older pipelines properly constructed, pressure tested, and maintained should not be considered inferior compared to newer systems. As a whole, the committee was not convinced from the information available that grandfathered lines present a risk to public safety for which further rulemaking action is warranted.

Discussion of comments in response to ANPRM. RSPA received letters from 25 persons commenting on the ANPRM. These commenters were distributed as follows:

Pipeline trade association—2 (AGA, INGAA)

State agency—3 (KY, DC, OR)

Federal agency—1 (DOI)

Pipeline operator—19

Only two commenters favored the first alternative of limiting the MAOP of grandfathered lines to 72 percent of SMYS. One of these commenters, the Kentucky Public Service Commission, argued that the grandfather exception was intended as a temporary measure to allow operators time to replace or reduce the pressure in their grandfathered lines. RSPA, however, has been unable to confirm from a search of the regulatory history that DOT intended the grandfather exception to be temporary. Clearly the plain language of the exception does not indicate that intent.

The second commenter, the Arco Pipe Line Company, said it does not operate gas pipelines above 50 percent of SMYS. Arco backed NTSB's contention that it is not sound engineering practice to allow old lines to operate indefinitely at higher hoop stress levels than those permitted for new lines.

To determine what constitutes sound engineering practice in the operation of pipelines, RSPA looks at available safety data and at engineering standards, literature, or expert testimony. In this proceeding, such information points in a direction contrary to NTSB's view. As noted above, our research disclosed that the grandfathered lines examined had a better safety record than non-grandfathered lines, probably because of sound maintenance practices and hydrostatic retesting. An even more significant research finding was that lowering operating hoop stress to 72 percent of SMYS would not have prevented failures due to the growth of time-dependent defects, and would have postponed failures only slightly. In addition, the TPSSC did not find that it is unsafe to operate older lines at stress levels higher than new ones. For further information, we considered the American Society of Mechanical Engineers' B31.8 Code, a set of voluntary standards for gas transmission and distribution piping systems that is widely recognized as representing acceptable safe practices in the industry. DOT relied heavily on the 1968 edition of this code as a basis for most of the standards in Part 192. The current edition of the B31.8 Code does not forbid the practice of operating old pipelines in Class 1 locations at hoop stress levels above the limit the code sets for new lines. In sum, the record in this proceeding does not support NTSB's view regarding sound engineering practice.

Neither commenter that favored repeal of the grandfather exception did so because of the need to provide greater protection against accidental overloading (such as from earthquakes, landslides, or the motion of heavy construction equipment), an idea RSPA had propounded in the ANPRM. The commenters that addressed the overload issue did not see it as a significant safety problem. Upon further analysis, RSPA agrees. First, pipeline failures due to overloading are rare. Second, grandfathered lines do not provide significantly less protection against overloads than other pipelines, judging by the average margin above 72 percent of SMYS at which the grandfathered lines RSPA has examined operate.

Finally, overloading that can cause a steel pipeline to fail is likely to be of such magnitude that operation at 72 percent of SMYS would not provide sufficient protection.

Four commenters favored the second alternative of maintaining the grandfather exception but requiring operators to take remedial action, such as hydrostatic testing, on lines that operate above 72 percent of SMYS. Of this group, a State agency and a distribution operator said hydrostatic testing should be required to remove as many latent defects as possible. Another State agency recommended increased monitoring by RSPA after the operators demonstrate the safety of their grandfathered lines. Finally, the Minerals Management Service (MMS) recommended limiting the MAOP of grandfathered lines to a line's test pressure divided by 1.25, which is the limit MMS imposes on offshore pipelines under its jurisdiction.

None of these commenters, however, presented information to explain why grandfathered lines operating above 72 percent of SMYS are in need of more remedial action to demonstrate or preserve their integrity than pipelines operating at 72 percent of SMYS or less. In fact, from a testing standpoint, the grandfathered lines operating above 72 percent of SMYS that RSPA examined in its research, which we believe comprised the large majority of the total mileage of all such lines, had a greater margin between test pressure and MAOP than Part 192 requires for new Class 1 pipelines operating at 72 percent of SMYS or less. For example, although Part 192 requires that new Class 1 pipelines operating at 72 percent of SMYS or less be tested to a least 1.1 times the pipeline's MAOP, the average test pressure of the four Texas Eastern grandfathered lines in Kentucky that were the subject of the task force investigation was 1.3 times the pipeline's MAOP.

Other than the four government agencies and two of the pipeline operators, the commenters unequivocally favored retention of the grandfather exception. The reason given most often was that RSPA's own research found that grandfathered lines operating above 72 percent of SMYS have a better safety record, based on fewer incidents per mile, than lines operating below that level.

This group of commenters also agreed with RSPA's research conclusions that reducing pipeline pressure to 72 percent of SMYS would not prevent accidents attributable to the growth of time-dependent defects in pipe, and would extend only slightly the time before such

defects grow to failure. None of the commenters who favored the other alternatives disputed these points.

In view of this response by commenters, RSPA believes the research conclusions are persuasive in assessing the merits of NTSB's recommendation to repeal the grandfather exception. Besides arguing that repeal is necessary for sound engineering practice, an issue addressed above, NTSB speculated that operation of the Beaumont and Lancaster pipelines at 72 percent of SMYS might have extended the times to failure. In the Lancaster case, NTSB also said that such a postponement might have been long enough for Texas Eastern to complete its remedial program on the line. The implication of this reasoning for grandfathered lines is that pressure reduction to 72 percent of SMYS would provide operators time to detect and remove time-dependent defects before failures occur, assuming that grandfathered lines as a group deserve such remedial treatment. RSPA's research showed that any extension of the time to failure would be only slight. Also, experts agree that because of the many variables and uncertainties involved in the growth of time-dependent unidentified defects, the additional time before failure that might be expected from pressure reduction cannot be quantified. RSPA believes, therefore, that since the prolongation of time to failure would only be slight and could not be quantified, pressure reduction to 72 percent of SMYS could not reasonably be expected to provide enough time for operators to prevent failures through remedial actions, assuming remedial actions were taken because of an identified safety problem.

Another reason commenters gave frequently for not changing the grandfather exception was the alleged enormous impact that would be created, perhaps industry wide, if the MAOP of grandfathered lines had to be reduced to 72 percent of SMYS. The comments indicated that aside from the cross-country grandfathered lines that were the focus of the research report, there is a myriad of short segments of pipeline throughout the industry for which the MAOP has been established under § 192.619(c). One operator commented that it has 1,032 such segments, totaling 238 miles. According to the comments, numerous operators lack proof of the SMYS of such segments, and they would have to be tensile tested or replaced to conform to a pressure limitation of 72 percent of SMYS.

RSPA recognizes that repealing or modifying the grandfather exception would affect the operation of numerous

short segments of existing pipeline in addition to the pipelines covered by the research report. No doubt we would have to weigh this impact against potential benefits should we decide to change the grandfather exception. However, the comments to the ANPRM did not suggest that these grandfathered short segments would benefit more from a change in the grandfather exception than the longer grandfathered lines examined in the research report. Indeed the potential benefits should not differ, considering that time-dependent defects are undoubtedly present in both groups of pipelines. Therefore, we have treated the two groups alike for purposes of this rulemaking proceeding.

Conclusions. The record shows that when DOT adopted the grandfather exception, it did not have information to justify requiring operators to lower the pressure in their grandfathered lines. We believe the same is true today with respect to pressure reduction to achieve a hoop stress no higher than 72 percent of SMYS. In fact, the prevailing information in this proceeding (primarily the research report, the TPSSC report, and the comments we received) indicates that restricting operation to 72 percent of SMYS would not contribute significantly to the safety of grandfathered lines. For example, operation at 72 percent of SMYS would not have prevented the Lancaster and Beaumont accidents discussed above, and would not have significantly increased the time to failure.

Neither does the information indicate that an acceptable level of safety for grandfathered lines operating above 72 percent of SMYS depends on taking remedial measures beyond what Part 192 requires for gas pipelines in general. Clearly Texas Eastern's and Texas Gas's enhanced testing and maintenance practices have resulted in better safety records on their grandfathered lines operating above 72 percent of SMYS than on their other lines. Nevertheless, we cannot conclude that the safety of grandfathered lines as a group demands such special treatment when they operate above 72 percent of SMYS. Operation above 72 percent of SMYS is neither the source of, nor a contributor to, the time-dependent defect problems at which the enhanced testing and maintenance are directed.

Consequently, RSPA hereby withdraws the ANPRM.

This action is consistent with the President's January 28, 1992, memorandum to agency heads on reducing the burden of government regulation. In addition to establishing a moratorium on issuing certain proposed

or final regulations, that memorandum called for agencies to review their existing regulations and eliminate those that are not cost-effective. As part of this review, we have considered § 192.619(c) and the ANPRM. We conclude that among the ANPRM alternatives, maintaining the grandfather exception is the clear choice to assure that expected benefits outweigh expected costs.

Authority: 49 U.S.C. 1672 and 1804; 49 CFR 1.53 and App. A of Part 106.

Issued in Washington, DC on September 3, 1992.

George W. Tenley, Jr.

Associate Administrator for Pipeline Safety.

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INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1145

[Ex parte No. 394 (Sub-No. 10)]

Railroad Rates on Recyclables; Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is seeking public comment on whether to exempt from regulation rail transportation of nonferrous recyclable commodities that appear to recover revenues that are lower than the variable costs of the transportation. If the proposed exemption is adopted, rates on exempted commodities would be deregulated, and would not be subject to the evidentiary requirements associated with the annual compliance proceedings that govern other recyclable commodities.

DATES: Any person interested in participating in this proceeding as a party of record by filing and receiving written comments must file a notice of intent to do so by September 29, 1992. We will issue a service list of the parties of record shortly thereafter. Comments and replies must be served on all parties on the service list. Comments are due October 29, 1992. Replies are due on November 30, 1992.

ADDRESSES: Send notices of intent and an original and 10 copies of pleadings referring to Ex parte No. 394 (Sub-No. 10) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: David Groves (202) 927-6395. Craig Keats (202) 927-6046.

[TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: The provisions of 49 U.S.C. 19731(e) limit rail rates on recyclable commodities, other than iron and steel, to revenue-to-variable cost (R/VC) ratios that are prescribed annually by the Commission. The regulations implementing these statutory provisions, found at 49 CFR part 1145, are designed to ensure that rates on recyclables, in the aggregate, remain below the statutory rate cap, and to preclude railroads from increasing individual recyclables rates that are already above the cap. Under the regulations, each year the Commission conducts an annual compliance proceeding to determine, on a regional and a national basis, aggregate rate levels for specific recyclable commodity groups. As part of the compliance process, carriers can justify their own rates rather than relying on the group data; and shippers can present evidence to demonstrate that specific rates that they pay are above the permissible level.

The provisions of 49 U.S.C. 10505 authorize the Commission to exempt particular services from regulation where (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 1010a (RTP); and (2) the service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power. Over the past 12 years, we have exempted from regulation numerous commodities and services when we found that the existence of substantial competitive pressures would protect shippers and advance the goals of the RTP without involvement by the Commission.

In our decision in Ex Parte No. 394 (Sub-No. 9), *Cost Ratio For Recyclables-1992 Determination* (not printed), served May 6, 1992 (*1992 Determination*), we reported the results of our first annual recyclables compliance proceeding. We generally measured compliance on the basis of certain 5-digit Standard Transportation Commodity Code designations, although pursuant to our rules we also permitted shippers to make more detailed showings for specific movements of individual commodities. We found that rates for certain commodities, in the aggregate or on an individual basis when challenged by a shipper, were above the appropriate R/VC ratio level. We also found, however, certain commodity groups whose revenues, both in the aggregate and for carriers reporting individually, appeared to be less than their variable costs for

movements in the East, West, and throughout the United States.¹

It appears to us that the railroads are subject to substantial competition as to these commodity groups, and that for such commodity groups regulation is not necessary to advance the rail transportation policy or to protect shippers from abuses of market power. Accordingly, under the provisions of 49 U.S.C. 10505, we propose to exempt from regulation commodity groups whose revenues have been found to be below the variable costs associated with the service in all of the presentations made during the prior annual compliance proceeding. Commodity groups will not be exempted if, during the annual proceeding, a shipper has shown that any movement of a commodity in the group has moved at rates above the cap level.

We are aware of the special attention that Congress gave to recyclables in the Staggers Rail Act, but we do not view the statutory language indicating that the rate limitations in section 10731(e) apply "[n]otwithstanding any other provision of this title or any other law" as precluding an exemption in appropriate circumstances. In our view, that language was intended to clarify that the important recyclables provisions of the Act superseded other statutory provisions limiting the Commission's authority over maximum railroad rates, such as the market dominance provisions of section 10709. Where a commodity is subject to substantial competition, however, market forces themselves should advance the goals of the RTP and of section 10731(e). Thus it seems to us that while an exemption would relieve the railroads of certain burdens that they would otherwise face, it would not deprive shippers of the protection that Congress gave them in enacting section 10731(e). We solicit comments on this essentially legal question.

Particularly in light of the fact that each commodity group comprises various commodities with different R/VC characteristics, we also recognize the possibility that individual rates could be above the proper level even though a commodity group is in

¹ As reflected in appendix A to our decision, on the basis of 1990 data, six 5-digit Standard Commodity Classification Code (STCC) commodity groups appeared to return less than their variable costs for all territories and carrier groupings sampled. The six are: STCC 20511, Bakery Products; STCC 22994, Packing or Wiping Cloths or Rags (Processed Textile Matter); STCC 30311, Reclaimed Rubber; STCC 34912, Steel shipping Containers; STCC 40261, Rubber or Plastic Scrap or Waste; and STCC 41115, Articles, Used, Returned for Repair or Reconditioning.