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All of the channels under consideration herein can be allotted in compliance with the Commission's minimum distance separation requirements. Channel 254C can be allotted to Pipestone with a site restriction of 33.8 kilometers (21 miles) east to accommodate Christensen's desired transmitter site, at coordinates North Latitude 43-53-01 and West Longitude 95-55-44. Channel 233A can be allotted to Sioux Falls, South Dakota, at Station KCFS' present transmitter site, at coordinates 43-31-57 and 96-44-20. Channel 292C1 can be allotted to Vermillion with a site restriction of 32.1 kilometers (20 miles) north to accommodate Vermillion Radio's desired transmitter site, at coordinates 43-03-00 and 96-47-12. Channel 248A can be allotted to Blair, Nebraska, at Station KBWH's present transmitter site, at coordinates 41-37-03 and 96-04-23. Channel 282A can be allotted to Sibley, Iowa, with a site restriction of 4 kilometers (2.5 miles) west to avoid a short-spacing to Station KUOO, Channel 280C2, Spirit Lake, Iowa, at coordinates 43-24-16 and 95-47-43. Channel 261A can be allotted to Rock Valley, Iowa, without the imposition of a state restriction, at coordinates 43-12-12 and 96-17-30, and can also be used at the transmitter sites proposed by the two applicants, Robert M. Mason (BPH-890324MI) and Iowa Communications (BPH-890411MC).

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* contracts 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.

Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS-117; Notice 1]

RIN 2137-AB 86

Transportation of a Hazardous Liquid in Pipelines Operating at 20 Percent or Less of Specified Minimum Yield Strength.

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: By exception (49 CFR 195.1(b)(3)), the Federal pipeline safety standards governing hazardous liquid pipelines do not apply to pipelines operated at 20 percent or less of the specified minimum yield strength (SMYS) of the pipe. In this Advance Notice of Proposed Rulemaking (ANPRM), the Research and Special Programs Administration (RSPA) is soliciting comments and information for evaluation in determining whether and to what extent to remove the exception from the regulations. The other exceptions in § 195.1(b) would not be affected. RSPA expects that this rulemaking will determine whether the application of the pipeline safety regulations to such pipelines would assure public safety and environmental protection by minimizing the possibility of accidents.

DATES: Comments must be received by December 31, 1990. Late filed comments will be considered to the extent practicable.

ADDRESSES: Send comments in duplicate to the Dockets Unit, room 8417, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8419 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: G. Joseph Wolf, (202) 366-4560, regarding the subject matter of this ANPRM or to

request a copy of the ANPRM questionnaire in 8½ x 11 inch format. Contact the Dockets Unit (202) 366-4453, for copies of the ANPRM or other docket material. Contact the Transportation Safety Institute, Pipeline Safety Division, 6500 South MacArthur Boulevard, Oklahoma City, OK 73123, (405) 680-4643, for a copy of 49 CFR part 195.

SUPPLEMENTARY INFORMATION:

Background

When the Federal pipeline safety regulations applicable to transportation of hazardous liquids by pipeline (49 CFR part 195) were issued in 1969, pipelines operated at 20 percent or less of SMYS were excepted from the regulations because these pipelines were thought to pose no unreasonable risk to public safety on the basis of their low operating stress. Since then, however, accidents that have occurred on low stress level pipelines provide reasons to reconsider the exception. One recent failure of such a pipeline, described later in this notice, resulted in extensive harm to the environment. Accordingly, RSPA is re-evaluating the need to regulate these pipelines.

Recommendations to DOT

In a resolution sent to RSPA on August 4, 1988, the National Association of Pipeline Safety Representatives (NAPSR), an association of state representatives participating in the cooperative Federal/State pipeline safety program, proposed that Part 195 be amended to remove the exception for hazardous liquid pipelines operating at 20 percent or less of SMYS. NAPSR based its resolution on an interstate petroleum products pipeline in Iowa and Nebraska that leaked and was found to be in poor condition. The pipeline right of way included a crossing of the Missouri River. Because it operated at less than 20 percent SMYS, it was not subject to Part 195. The State environmental agency required the operator to develop a plan to assure timely recovery and cleanup.

On October 17, 1988, RSPA accepted the NAPSR recommendation. RSPA further stated that the subject would be addressed by a DOT Safety Review Task Force (Task Force) which was nearing the end of an in-depth review of the pipeline safety program. The Task Force had been established by the Secretary of Transportation to review the adequacy of all of the safety programs of the Department. RSPA stated that the Task Force was expected to complete its report later that year and that RSPA would await the Task Force

report before proceeding with a rulemaking.

On January 12, 1989, the Task Force presented its report. The Task Force stated that many pipeline accidents have little or nothing to do with the relative strength of the pipe, and that many accidents result from third party damage and corrosion. The report included the recommendation that:

RSPA should reassess the blanket exemption from safety regulations for hazardous liquid pipelines that operate at less than 20 percent of their specified minimum yield strength and should initiate rulemaking to revoke the exemption in whole or in part.

On February 10, 1989, RSPA accepted the Task Force recommendation and indicated that a basis for rulemaking would be established by developing information through a technical study and an Advance Notice of Proposed Rulemaking (ANPRM). RSPA determined that it has insufficient information to conduct a Technical Study and proceeded with this ANPRM in order to gather comments and information.

Pipeline Accident

On January 1, 1990, an incident occurred which strongly supports the need to obtain data regarding hazardous liquid pipelines operating at or less than 20 percent SMYS. A 12-inch diameter, 6.7 mile pipeline between New Jersey and Staten Island, N.Y. spilled over 500,000 gallons of fuel oil into the Arthur Kill waterway. The Arthur Kill and its connecting waterways traverse both densely industrialized and wildlife areas. The spill resulted in environmental damage of millions of dollars. According to a report by Battelle dated April 20, 1990, an underwater leak in the pipeline resulted from fatigue cracking subsequent to outside force damage which occurred possibly months or even years earlier.

One control on the pipeline was a negative deviation leak detection system. Leak detection was based on comparing volume flowing past both ends of the pipeline. When the volume delivered during a preset time interval was less than the volume shipped by more than a pre-set amount, a negative deviation signal automatically operated an alarm and began to shut down the pipeline. Prior to the leak, pipeline personnel had been responding to repeated false negative deviation alarms by resetting the system's automatic shut down device. When the system began to shut down the pipeline at the time of the leak, pipeline personnel reset it. As a result, oil was pumped through the

leaking pipeline for about six hours before it was shut down.

Because it was operated at less than 20 percent of SMYS, the pipeline under the Arthur Kill was not subject to the hazardous liquid pipeline regulations or to periodic oversight by Federal pipeline inspectors for compliance with those regulations. Had the pipeline been subject to the equipment and operating procedure requirements of the Federal regulations, the spill might have been minimized.

Congressional Action

Legislation has been introduced in Congress which specifically would require that pipelines operating at 20 percent or less of SMYS be subject to the regulations (See Congressional Record of March 22, 1990, pages 3099-3101, which reports the introduction of bills cosponsored by New Jersey Senators Lautenberg and Bradley). Among its provisions, the proposed legislation would permit exemptions on a case-by-case basis; however, it would require that the owner or operator of the exempted pipeline annually certify continuing compliance with the conditions under which the exemption was granted.

National Transportation Policy

Consideration of this rulemaking is consistent with the elements of the National Transportation Policy that seek to ensure the integrity of the nation's transportation infrastructure, public safety, and environmental protection.

Current Requirements

Section 195.1 (b)(3) states that part 195 does not apply to "Transportation of a hazardous liquid through pipelines that operate at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe;". For clarification, the pipelines excepted are those in which the stress does not exceed 20 percent SMYS at any point along the length of the pipeline. The other current exceptions to regulation would remain in effect if RSPA publishes a rule change.

It should be noted that § 195.8 states that "No person may transport any hazardous liquid through a pipe that is constructed after October 1, 1970, of material other than steel * * *". The section also contains provisions for notification to the Secretary of the intention to use a pipeline constructed of pipe material other than steel and for the Secretary to make a determination regarding the hazard of using the proposed pipe material for the specific application proposed. However, this ANPRM addresses only pipelines

constructed of steel pipe and operated at 20 percent or less of SMYS.

Discussion

Most hazardous liquid pipelines are operated at a pressure creating a stress in excess of 20 percent of SMYS of the pipe because it is not economical to construct and operate pipelines to operate at a low stress. To maximize economy, many pipelines are operated at the maximum pressure permitted by part 195, which is equivalent to 72 percent SMYS.

Some pipelines are operated at 20 percent or less of SMYS for varying reasons. RSPA is unable to estimate the number of these pipelines. However, RSPA believes that such pipelines typically move hazardous liquids to or from petrochemical complexes such as refineries, manufacturing plants, and hazardous liquid terminals, and that these pipelines are relatively short. Low stress operation is adequate to move the liquid to or from the complex at the rate required for operation. The operators of petrochemical complexes usually do not operate other pipelines subject to part 195, and therefore may not be familiar with its requirements. Piping within petrochemical complexes is not regulated under 49 CFR part 195 and is not the subject of this ANPRM.

Many gathering lines in non-rural areas are operated at 20 percent or less of SMYS. As set forth in § 195.1, gathering lines in nonrural areas are subject to part 195, while gathering lines in rural areas are not subject to those rules.

Also, RSPA believes that there may be a limited number of pipelines that transport hazardous liquids for long distances at pressures equivalent to 20 percent or less of SMYS. RSPA believes that these pipelines are operated at low stress typically because they are old and potentially in poor condition.

Regardless of the stress at which they are operated, pipelines are vulnerable to damage from the two principal causes of pipeline failure—excavation (outside force) and corrosion. Admittedly, pipelines which are operated at lower stresses may survive damage from excavation and corrosion for a longer period before failure than will high stress pipelines, but the risk of failure is present nevertheless.

RSPA is considering the modification or deletion of § 195.1(b)(3), so that some or all hazardous liquid pipelines operated at 20 percent or less of SMYS would no longer be excepted from regulation under part 195. As stated above, this ANPRM is only applicable to the construction and operation of

pipelines made of steel pipe because the use of other material is permitted only upon notice to the Secretary and upon review of the details of the notice by the Secretary.

If a rulemaking is proposed that applies part 195 to pipelines operating at 20 percent or less of SMYS, existing pipelines would be subject to all subparts of part 195 except Subpart C—Design Requirements, and Subpart D—Construction. Although the requirements of Subpart E—Hydrostatic Testing currently would not apply to non-HVL pipelines constructed before dates specified in the regulations, the issuance of a rule presently being considered would require the hydrostatic testing of those pipelines or, alternatively, a restriction of their operating pressure. All sections of part 195 would apply to pipelines constructed after publication of a regulation. Any rulemaking resulting from this ANPRM would not apply to hazardous liquid pipelines presently excepted by the other subparagraphs of § 195.1(b).

Information Acquisition

Because pipelines operated at 20 percent or less of SMYS have been excepted from Federal regulation (§ 195.1(b)(3)), owners and operators are excepted from filing reports with RSPA. Consequently, RSPA lacks specific information about such pipelines. Therefore, this notice contains a questionnaire for the purpose of gathering information to make a decision regarding rulemaking. The owners or operators of hazardous liquid pipelines (1) operated at 20 percent or less of SMYS and (2) not otherwise excepted under § 195.1(b) are requested to complete the questionnaire for each such pipeline and return it by December 31, 1990. RSPA needs the information requested in the questionnaire to estimate the extent of low stress pipelines, to perform a cost/benefit analysis, and to develop and consider alternatives that would ensure the safe operation of low stress pipelines.

It is important that all owners or operators of pipelines potentially affected by such a rulemaking respond to the extent possible so that RSPA is aware of the impact of the change being considered. Partially completed questionnaires will have value. It is especially important that owners and operators respond to question 1. Pipeline owners and operators and other interested and affected parties are invited to comment on the subject of this ANPRM. In addition, state and local governments are invited to provide information as may be available to them about pipelines operated at 20 percent

or less of SMYS that are located within their jurisdictions.

Definitions

For the purpose of responding to the questionnaire, the following definitions are provided:

Accident means a failure in a pipeline system for which a report is required in accordance with § 195.50.

Environmentally sensitive area means any onshore area where a loss of hazardous liquid could reasonably be expected to pollute any water crossing that is more than 100 feet wide from high water mark to high water mark, any reservoir holding water for human consumption, and any offshore area.

Hazardous liquid means petroleum, petroleum products, or anhydrous ammonia.

Highly volatile liquid or *HVL* means a hazardous liquid which will form a vapor cloud when released to the atmosphere and which has a vapor pressure exceeding 276 kpa (40 psia) at 37.8 °C (100 °F).

Limit of operating Pressure or *LOP* means the normal maximum limit of internal pressure in the pipeline during operation except for surges and other variations from normal operations. To qualify as a pipeline operated at 20 percent or less of SMYS, the LOP cannot be greater than a pressure equivalent to 20 percent of SMYS. *Major spill* means a release from the pipeline of 500 or more barrels of liquid; an escape to the atmosphere of 50 or more barrels per day of highly volatile liquid; the death of a person; or property damage to the property of the operator or others, or both, exceeding \$50,000.

Navigable waterways means those waters that have been determined to be navigable waterways by the United States Coast Guard (USCG). A list of navigable waterways is available at the appropriate USCG District Office.

Pipeline means all parts of a pipeline facility through which a hazardous liquid moves in transportation, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

Populated area means any area other than a rural area.

Rural area means outside the limits of any incorporated or unincorporated city, town, village, or any any other designated residential or commercial area such as a subdivision, a business or shopping center, or community development.

Questionnaire

Pipelines transporting petroleum, petroleum products, or anhydrous ammonia are regulated under 49 CFR part 195, Transportation of Hazardous Liquids by Pipeline. The owners or operators of hazardous liquid pipelines (1) operated at 20 percent or less of SMYS and (2) not otherwise excepted under § 195.1(b) are requested to complete the questionnaire for each such pipeline and return it by December 31, 1990. A copy of the questionnaire in 8½ x 11 inch format may be requested from G. Joseph Wolf (202) 366-4560.

Complete a separate questionnaire for each pipeline reported. This questionnaire is only applicable to the operation of pipelines made of steel pipe. Pipelines to be reported include all hazardous liquid pipelines operating at 20 percent or less of SMYS throughout the entire length of the separate pipeline including gathering lines in non-rural areas and pipelines between plants at petrochemical complexes, but excluding piping within a single plant property. It is important that all owners or operators of such pipelines respond to the extent possible so that RSPA is aware of the impact of a change being considered. Partially completed questionnaires will have value. It is especially important that owners and operators respond to question 1.

See the ANPRM for definitions of terms used in this questionnaire.

1. Pipeline Identification and Description

a. Name or number (Provide the name or number by which the pipeline is commonly identified in company records.)

b. Is this pipeline presently operated under 49 CFR Part 195? Yes ___ No ___

c. Length ___ miles.

d. Volume of each liquid transported (bbl/year):

	1987	1988	1989
Non-HVL.....			
HVL.....			
Anhydrous ammonia.....			

e. Steel Pipe Type (Method of Manufacture):

Electric resistance weld
 Other (specify) _____
 Unknown _____

f. Date(s) of installation

2. Limit of Operating Pressure (LOP)

a. LOP is: _____ psig; _____ Percent SMYS.
 b. Indicate the method on which LOP is based. If LOP is not based on one of the four listed alternatives, describe the method in comments attached to the questionnaire.

—Calculated internal design pressure with a safety factor of 0. _____ times SMYS.
 —_____ percent of the test pressure for any part of the pipeline which has been hydrostatically tested.
 —_____ The design or test pressure of a pipeline component.
 —_____ The documented highest operating pressure of the pipeline.

3. Testing
 If this pipeline has been hydrostatically tested, list the date it was tested: _____. List the minimum value of test pressure divided by LOP at any point in the pipeline: test pressure ÷ LOP × 100 = _____ percent.

4. Performance
 a. Tabulate estimated average annual costs of accidents which have occurred in the years 1986 through 1990.

Cost of repair or replacement.....
 Cost of product lost.....
 Costs attributed to loss of use of the pipeline.....
 Cost of damage to property other than the pipeline.....
 Cost of bodily harm and/or loss of life.....
 Loss of life valued at \$1,500,000.
 Bodily harm reportable per § 195.50(e) valued at \$450,000.
 Cost of environmental clean-up, whether or not paid by the operator.....
 Estimated cost of damage to the environment, exclusive of clean-up.....
 Cost of litigation.....
 Other costs.....
 Total costs.....

b. List and identify by date incidents that resulted in a major spill. Estimate costs on the same basis as in Question 4.a. If more than two major spills have occurred, list on an attachment to the questionnaire.

Date	Barrels spilled	Cause	Total cost

5. Risk Exposure
 a. Indicate, in miles, what portion of the pipeline is located:
 —within 220 yards of populated areas. _____ miles
 —under or over a navigable waterway. _____ miles

—within an environmentally sensitive area. _____ miles.

6. Cost of Compliance
 a. Estimate the one-time costs that must be incurred to bring the pipeline into compliance with the requirements of Part 195.

Review, design and planning..... \$
 Materials and construction.....
 Documentation and paperwork.....
 Operational and maintenance training.....
 Other (specify).....
 Total.....

b. Estimate the continuing additional annual costs necessary to operate the pipeline in compliance with 49 CFR Part 195.

Operational expense..... \$
 Maintenance expense.....
 Operational and maintenance training.....
 Documentation and Paperwork.....
 Other (specify).....
 Total.....

7. Small Business
 a. Is the operator a small business according to the guidelines of the Small Business Administration?
 Yes _____ No _____ If yes, answer b. and c.

b. Furnish the pipeline's number of employees: _____
 c. Furnish the pipeline's total revenue for the years:
 1987 _____ 1988 _____
 1989 _____

Issued in Washington, DC on October 26, 1990.

George W. Tenley, Jr.,
 Associate Administrator for Pipeline Safety.
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 BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 553

[Docket No. 90-25; Notice 1]

RIN 2127-AD78

Reconsideration of Rules; Effect on Judicial Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Notice of proposed rulemaking.

SUMMARY: NHTSA is proposing to amend one provision of its procedural regulations that apply to the issuance, amendment, and revocation of rules

under the Motor Vehicle Information and Cost Savings Act and the National Traffic and Motor Vehicle Safety Act. The provision at issue addresses the time within which affected persons may seek judicial review of a final rule if a petition for agency reconsideration of that rule has been filed. The proposed revision would make the regulation consistent with the judicial review provisions of the two statutes and with recent judicial decisions.

DATES: Comment closing date: Comments on this notice must be received on or before December 17, 1990.

Proposed effective date: If adopted as a final rule, these amendments would be effective November 30, 1990.

ADDRESSES: All comments on this notice should refer to Docket No. 90-25; Notice 1 and be submitted to the following: 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: Kenneth Weinstein, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-5263.

SUPPLEMENTARY INFORMATION: The Motor Vehicle Information and Cost Savings Act ("Cost Savings Act") and the National Traffic and Motor Vehicle Safety Act ("Safety Act") each contain provisions authorizing judicial review of rules and standards issued thereunder. Section 504(a) of the Cost Savings Act, 15 U.S.C. 2004(a), provides that any person who may be adversely affected by any rule prescribed under sections 501, 502, 503, or 506 of that Act (relating to automobile fuel economy) may, at any time prior to 60 days after such rule is prescribed, file a petition for judicial review of the rule in an appropriate United States Court of Appeals. Section 610 of the Cost Savings Act, 15 U.S.C. 2030, provides that persons who may be adversely affected by any standard or rule under title VI of that Act (relating to theft protection for automobiles) may obtain judicial review in accordance with section 504 of the Act. Similarly, section 103(a) of the Cost Savings Act, 15 U.S.C. 1913(a), provides that persons who may be adversely affected by a rule issued under section 102 of that Act (relating to automobile bumper standards) may, at any time prior to 60 days after such rule is issued, file a petition for judicial review of the rule in