

Section VI Certification

This report must be certified, as follows:

A. By licensee or permittee, if an individual.

B. By a partner, if a partnership:

C. By an officer, if a corporation or association; or

D. By an attorney of the licensee or permittee, in case of physical disability or absence from the United States of the licensee or permittee.

Willful false statements made on this form are punishable by fine or imprisonment, use Title 18 section 1001.

I certify that to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed _____

Title _____

Date _____

Name of Respondent _____

Telephone No. (include area code) _____

FCC Notice to Individuals Required by the Privacy Act and the Paperwork Reduction Act

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, accountants, engineers, and application examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be turned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested Authority.

The foregoing notice is required by the Privacy Act of 1974, P.L. 93-579, December 31, 1974, 5 U.S.C. 552a(e)(3) and the Paperwork Reduction Act of 1980, P.L. 96-511, December 11, 1980, 44 U.S.C. 3507.

Concurring Statement of Commissioner Dennis R. Patrick

In re: Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services.

I agree that our forms and evaluation process should be reviewed, but I continue to be concerned about the undesired effects of the Commission's formal incorporation of processing guidelines into our EEO evaluation process. I do not, however, object to the use of processing guidelines for internal administrative purposes. See Separate Statement of Commissioner Dennis R. Patrick Dissenting in Part, Amendment of the Commission's Rules to Implement the Equal Employment Opportunity Provisions of the Cable Communications

Policy Act of 1984 (MM Docket No. 85-61).

I am also concurring with this *Notice of Proposed Rulemaking* for an additional reason. While I believe that efforts, rather than numbers, should be the focus of our EEO compliance program, *id.*, the data we collect should be as accurate as possible. I am, therefore, also concerned that the proposal to permit licensees to combine full-time and part-time employees in the employee data section of FCC Form 395B may not provide the Commission with all of the information it needs to monitor EEO compliance. Currently, licensees are required to report full-time and part-time employees on a separate basis. Under the proposed combined format, a licensee could, for FCC reporting and compliance purposes, improve its minority employee profile overall by hiring minorities on a part-time basis only. My tentative view is that reporting full-time and part-time employees on a separate basis will give the Commission a more accurate picture of the licensee's hiring practices.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-88, Notice 1]

Gas Pipeline Damage Prevention Programs

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to delete the rule that requires gas pipeline operators to respond to notices of intended excavation in areas that do not contain buried gas pipelines. The current rule is unduly burdensome and counterproductive in connection with many existing damage prevention programs. The proposed rule change should encourage greater participation in "one-call" system programs and reduce program costs.

DATE: Interested persons are invited to submit written comments on this proposal by February 3, 1986. Late filed comments will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Paul J. Cory, (202) 426-2082. Copies of the proposal and documents related thereto may be obtained from the

Dockets Branch, Room 8426, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, (202) 426-3148.

SUPPLEMENTARY INFORMATION:

Background

Beginning April 1, 1983, operators of gas pipelines were required to conduct or participate in damage prevention programs to reduce the risk of excavation damage to buried pipelines in populated areas (47 FR 13818, April 1, 1982). Section 192.614(b) sets forth key elements of the programs, some of which are: receiving calls about pending excavations, advising callers whether there are pipelines in the areas of excavation, and temporarily marking any pipelines in those areas.

To publicize the program and provide a means for receiving notices of planned excavation, most gas pipeline operators participate in "one-call" systems. Most gas distribution operators also notify homeowners within their service area of the "one-call" system by periodically including with gas bills the telephone number to be called before digging. These systems, which may be run by governmental or private entities, advertize a single phone number for all excavators in an area to call to tell pipeline and other underground utility operators of the time and place of intended excavations. Information received by the systems is then relayed to utility operators.

Problem

When a "one-call" system receives a call from someone who plans to excavate, maps divided into grids are used to identify utilities that may be affected by the excavation. Each operator of utilities located anywhere inside a grid in which the excavation will occur is then notified of the call. Under § 192.614(b)(4), gas pipeline operators who receive such notices of intent to excavate must call (or otherwise actually notify) the persons giving notice to tell them whether or not a pipeline is located in the area of excavation activity. When grid sizes are large, operators have to return many calls for excavations planned inside the grid that will occur far away from their pipelines. Such negative call-backs can take the full time of several employees and may not produce safety benefits.

An example of the grid size problem is the Miss Dig "one-call" system, which covers the State of Michigan. This system was existing for almost 10 years before § 192.614 was published and is generally recognized as effective. The

smallest geographical area in which Miss Dig's computer can identify operators is a city, incorporated village, or township (generally 36 mi.²). One operator of a transmission line in Michigan, Consumers Power Company, recorded the instances of excavation notices requiring negative call-backs for a two-week period in April 1983. They ranged from a low of 15 to a high of 136 daily from various teletype receiving stations.

In addition to the grid size problem, the negative call-back feature of § 192.614(b)(4) has had other undesirable consequences in connection with "one-call" systems. When an excavator receives a call from one, but not the only, gas operator in an area saying it has no pipelines in the area, the excavator may erroneously assume that there are not any gas pipelines near the excavation site. Also, some operators have avoided joining "one-call" systems with large grid sizes and, instead, chosen to conduct independent programs. While independent programs are permissible, RSPA believes damage prevention programs that involve participation in "one-call" systems are preferable in most cases.

Discussion

The purpose of requiring operators to contact persons who give excavation notices was stated in the preamble to the final rule:

[P]ersons planning to engage in excavation activities should be told before such activities begin whether there are pipelines in the area and if so, the type of temporary marking that is to be provided and when the marking will be completed. Giving out this information early in the process should deter excavators from forging ahead with the work should they feel a "one-call" system has not been responsive to their calls. (47 FR 13822)

Thus, the theory behind § 192.614(b)(4) is that without preliminary communication from operators, excavators would become impatient and begin digging before any pipelines in the area are marked. The basis for this theory lies in those "one-call" system recognized as successful that require a definite response by operators to each notice of intent to excavate. Such response help prevent accidents by beginning preconstruction communication and planning between the parties involved.

The benefit of early communication is obvious when pipelines are in the area of intended excavation. But, if none exist in those areas, is pre-excavation communication between excavator and operator still of value? The only apparent benefit to giving negative responses is to keep excavators

interested in the programs, lest they dig quickly or fail to call on the next occasion when pipelines may be in the area of excavation. This effect is unlikely, however, because each of the "One-call" systems in the U.S. specified a time frame (usually 1-3 days) within which participants must mark their underground utilities that might be affected by the proposed excavation. If the specified time elapses without any marking, excavators may reasonably assume that underground utilities do not exist in the area of intended excavation.

In addition, in most states underground utilities other than gas pipelines are not required to notify excavators when they have no facilities in the proposed excavation area. Comments are invited concerning the effectiveness of "one-call" damage prevention programs for utilities that do not notify excavators when there are not any underground facilities in the area.

In view of the undue burden and undesirable consequences of the negative call-back feature of § 192.614(b)(4), RSPA is proposing to eliminate this feature from the rule. Section 192.614(b)(4) would be amended as set forth below. Under the proposed amended rule, operators still would have to provide notification to excavators if the operator has a pipeline in the area of intended excavation.

Classification

Since this proposed rule will have a positive effect on the economy of less than \$100 million a year, will result in cost savings to consumers, industry, and government agencies, and no adverse impacts are anticipated the proposed rule is not "major" under Executive Order 12291. Also, it is not "significant" under Department of Transportation procedures (44 FR 11034). RSPA believes that the proposed rule will reduce the costs of damage prevention programs by reducing the number of telephone calls required by the current rule. However, this savings is not expected to be large enough to warrant preparation of a Draft Regulatory Evaluation.

Based on the facts available concerning the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not, if adopted as final, have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Damage prevention program.

PART 192—[AMENDED]

In view of the above, RSPA, proposes to amend Part 192 to Title 49 of the Code of Federal Regulations as follows:

1. The authority citation for Part 192 continues to read as set forth below:

Authority: 49 U.S.C. 1672; U.S.C. 1804; 49 CFR 1.53 and Appendix A of Part 1.

2. Section § 192.614(b)(4) would be revised to read as follows:

§ 192.614 Damage prevention program.

* * * * *

\ (b) * * *

(4) If the operator has a buried pipeline in the area of intended excavation activity, provide for actual notification to the person giving notice of intent to excavate of—

- (i) The existence of that pipeline;
- (ii) The type of temporary marking to be provided under paragraph (b)(5) of this section; and
- (iii) How to identify the markings.

* * * * *

Issued in Washington, D.C. on November 27, 1985, under authority delegated by 49 CFR Part 106, Appendix A.

Robert L. Paullin,

Director, Office of Pipeline Safety.

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-19)]

Boxcar Car Hire and Car Service

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to an advance notice of proposed rulemaking, 49 FR 27333 (1984) the Commission proposes to adopt rules to govern its handling of boxcar car hire and car service. We propose to adopt a joint proposal submitted by the Consolidated Rail Corporation, Brae Corporation, IteL Rail Corporation, and the American Short Line Railroad Association, but request comments on other proposals that were submitted.

DATE: Comments are due January 2, 1986.

ADDRESS: An original and 15 copies of comments and replies referring to Ex Parte No. 346 (Sub-No. 19) must be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.