

PI-75-0105

June 4, 1975

Mr. Ripley E. Woodard, Jr.  
Woodard, Hall, McCrory, Henry & Prim  
300 Esperson Building  
Houston, Texas 77002

Dear Mr. Woodard:

Your letter of May 16, 1975, to Mr. Benjamin O. Davis, Jr. Assistant Secretary for Environment, Safety, and Consumer Affairs, has been forwarded to this office for response. You ask for an opinion as to what constitutes interstate commerce for purposes of the jurisdiction of the Department of Transportation over pipelines carrying liquid hazardous commodities.

Under the Transportation of Explosives Act, 18 USC 831-935, the Department has jurisdiction over common, contract, and private carriers engaged in interstate or foreign commerce who transport liquid hazardous materials by pipeline. Safety regulations issued under 18 USC 934 governing the design, construction, operation, and maintenance of pipelines are published in Title 49 of the Code of Federal Regulations, Part 195 (copy enclosed).

Section 831 of Title 18 defines the term "interstate and foreign commerce" to mean "commerce between a point in one State and a point in another State, between points in the same State through another State or through a foreign country, between points in a foreign country or countries through the United States, and commerce between a point in the United States and a point in a foreign country or in a Territory or possession of the United States, but only insofar as such commerce takes place in the United States."

The legislative history of the Transportation of Explosives Act indicates that the nature of a carrier determines the extent of the Department's jurisdiction over pipelines the carrier operates. Thus, jurisdiction applies to an intrastate pipeline operated by a carrier that is engaged in interstate commerce by some other pipeline. Furthermore, in our opinion, the interstate nature of commerce being conducted can qualify a carrier whose operations are wholly within one State as an interstate carrier for purposes of the Transportation of Explosives Act and 49 CFR Part 195.

In addition, under the recently enacted Hazardous Materials Transportation Act (Pub. L. 93-633, January 3, 1975), the Department has jurisdiction over pipelines carrying hazardous commodities in Commerce which are not subject to the Transportation of Explosives Act. The Hazardous Materials Transportation Act defines "commerce" in Sec. 103(a) as "trade, traffic, commerce, or transportation, within the jurisdiction of the United States, (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in clause (A)."

We trust this satisfactorily responds to your inquiry.

Sincerely,  
Original signed by:  
Joseph C. Caldwell  
Director  
Office of Pipeline Safety

Woodard, Hall, McCrory, Henry & Prim  
300 Esperson Building  
Houston, Texas 77002

May 16, 1975

Mr. Benjamin O. Davis, Jr.  
Assistant Secretary for Environment, Safety and Consumer Affairs  
Department of Transportation  
400 Seventh Street, S.W.  
Washington, D. C. 20590

Re: Federal standard as to whether a pipeline lies in interstate commerce; federal standards governing location, construction and maintenance of pipelines lying in interstate commerce.

Dear Mr. Davis:

This law firm represents a company that may be constructing a pipeline for transportation of a highly flammable and explosive chemical in the near future. Although our feeling is that this pipeline lies solely in intrastate commerce, we would appreciate the thinking of your office as to what constitutes interstate commerce, and, consequently, would invoke the jurisdiction of your office or the appropriate federal agency.

In addition, we would appreciate your furnishing us with a copy of all federal regulations applicable to the location, construction and maintenance of such a pipeline lying in interstate commerce.

Cordially,  
WOODARD, HALL, McCORORY, HENRY & PRIM  
By: Ripley E. Woodard, Jr.