

July 2, 1985

Mr. Walter S. Malinowski
Director, Contract Administration
Petroleum Operations & Support Services, Inc.
850 South Clearview Parkway,
New Orleans, LA 70123-3498

Dear Mr. Malinowski:

Your letter of January 31, 1985, asks whether the regulations in 49 CFR Part 195 apply to five petroleum pipelines associated with the Strategic Petroleum Reserve (SPR) that are owned by the U.S. Department of Energy (DOE) and contractually operated by Petroleum Operations and Support Services, Inc. (POSSI).

Part 195 was issued under Section 203 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 USC 2002). As stated in §195.1(a), the regulations apply to pipelines which are subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) or are on the Outer Continental Shelf (OCS). There are exceptions listed in §195.1(b) that do not appear relevant to the five SPR pipelines. Further, none of the five pipelines is on the OCS.

In determining whether a pipeline that is not on the OCS is subject to Part 195, we look to whether tariffs or accounting records for the pipeline are on file at FERC. To our knowledge, no such filings have been made for any of the SPR pipelines. Therefore, the Part 195 regulations are not currently being enforced against those pipelines.

In general, pipelines which are subject to FERC jurisdiction and, thus, to Part 195 are those used in interstate or foreign commerce. It has been proposed to expand the scope of Part 195 to cover pipelines which are not used in interstate or foreign commerce but which such commerce. (Docket PS-80; 49 FR 11226, March 26, 1984). The proposal also would eliminate the reference to FERC jurisdiction for the purpose of indicating which pipelines are used in interstate or foreign commerce. When this proposed amendment becomes final (publication scheduled for February 1985), the SPR pipelines clearly will come within the scope of Part 195 regardless of FERC jurisdiction, because either they are used in interstate or foreign commerce or they affect such commerce.

As provided by 49 USC 2002, "[t]he standards [Part 195] apply to each person who engages in the transportation of hazardous liquids or who owns or operates pipeline facilities." The term "person", as defined by 49 USC 2001(1), does not include the United States or any administrative agency thereof. Therefore, DOE is not obligated to comply with the Part 195 standards, even if the SPR pipelines fall within the scope of Part 195.

However, as a corporation, POSSI is a "person" under the definition in 49 USC 2001(1). Also, we understand that POSSI operates the SPR pipelines on its own, independent of DOE's control. Thus, it would have to meet all applicable Part 195 standards for any pipelines that are within the scope of Part 195. In accordance with 49 CFR 195.401(c), applicable standards would include those covering design and construction, as well as accident reporting, operation, and maintenance.

In short, in the absence of affirmative information that the SPR pipelines are subject to FERC jurisdiction, POOSI need not comply with the Part 195 Standards as they are currently applied. However, when the amendment proposed in Docket PS-80 takes effect, POSSI will have to comply with applicable Part 195 standards for each SPR pipeline it operates.

We trust this adequately responds to your inquiry.

Sincerely,

/signed/

Richard L. Beam
Associate Director for
Pipeline Safety Regulation
Materials Transportation Bureau