

May 21, 2001

Edward A. Brigham
Acting Deputy Director
Research and Special Programs Administration
U.S. Department of Transportation
Room PL-401
400 Seventh Street, S.W.
Washington, DC 20590-0001

**Re: Pipeline Safety: Hazardous Liquid Pipeline Accident Reporting
Revisions; 66 Fed. Reg. 15681; Docket No. RSPA-01-8663**

Dear Mr. Brigham:

On March 2001, the Research and Special Programs Administration (RSPA) published a Notice of Proposed Rulemaking (NPRM) on its Hazardous Liquid Pipeline Accident Reporting Revisions. The RSPA proposal would amend the pipeline safety regulations by lowering the reporting threshold to hazardous liquid pipeline spills below 50 barrels.

The Office of the Chief Counsel for Advocacy of the U.S. Small Business Administration (SBA) was created in 1976 to represent the views and interests of small businesses in federal policy making activities.¹ The Chief Counsel participates in rulemakings when he deems it necessary to ensure proper representation of small business interests. In addition to these responsibilities the Chief Counsel monitors compliance with the Regulatory Flexibility Act (RFA), and works with Federal agencies to ensure that their rulemakings analyze and substantiate the impact that their decisions will have on small businesses.

A review of RSPA's Regulatory Flexibility Act (RFA) certification contained in the Pipeline Accident Reporting Revision proposal has uncovered a deficiency which should be corrected in the Final Rule. Additional information is needed so that the public may ascertain the validity of RSPA's certification of no significant impact upon a substantial number of small entities. In order to comply with the RFA, it is important that RSPA include the following information in the final rule.

¹ Regulatory Flexibility Act, 5 U.S.C. § 601, as amended by the Small Business Regulatory Flexibility Act, Pub. L. No. 104-121, 110 Stat. 866 (1996).

Cost Analysis

In its cost estimate, RSPA estimated the number of hours it would take an operator to complete the required forms as a result of this proposal. However, it is difficult to determine the accuracy of the RFA certification without further data and explanation of these costs. “RSPA estimates that it will take each operator 1 hour to complete the short form, and estimates the long form will take each operator 7 hours to complete.” 66 Fed. Reg. 15681, at 15683. The proposal does not specify the criteria for completing the long versus the short form. There is a brief discussion earlier in the proposal of a different reporting requirement for spills which occur in water, however it is not clear whether or not this is the dividing line for determining which form must be completed.

Alternatively, the long form mentioned could refer to the time it has previously taken operators to complete the existing form and the shorter length of time could refer only to this new proposal (i.e. only small spills between 5 gallons and 5 barrels.) It is unclear which, if either, of these two rationales is correct. This section of the cost estimate needs to be clarified.

The proposal further states that the average cost to complete these forms is \$40 per hour. What is the basis for the \$40 figure? Does it relate to a salaried employee within the business or the owner of the business? Is this a standard figure used to estimate the cost of forms within the pipeline industry? Additional information is needed to provide the public with a basis for this \$40 estimate. Without this data a small business cannot assess the accuracy of RSPA’s estimated costs of the proposed rule.

Size Standard and additional cost analysis

RSPA has indicated that the incremental cost increase to comply with this proposal will be \$136,600 to the hazardous pipeline industry and has divided this figure among the 200 hazardous pipeline operators. However, it is unclear how many of these 200 operators are small businesses. Are all operators considered to be small businesses under the U.S. Small Business Administration’s size standard guidelines? (13 CFR 121.201) In order to determine the impact upon small businesses the RSPA must first determine how many small businesses are affected by the proposed rule. Small operators cannot absorb additional regulatory costs in the same manner as large businesses. It is important, therefore, to estimate accurately the number of small pipeline operators that will be impacted by this rule so that the rule can be tailored to minimize the burden on small entities while accomplishing the agencies regulatory or policy objectives.

Additionally, the average incremental cost increase of this proposal per operator is given as \$683. RSPA then concludes that this is a small increase to the industry. While this is most likely true, RSPA should provide additional statements to support this conclusion. Failure to provide the factual basis, including the basis for its economic impact criterion, opens the rule to a valid charge of non-compliance with 5 U.S.C. § 605 (b). In order for the cost impact on small business to be accurately assessed, the cost of the proposal must be compared with revenues of the small businesses being regulated. In the case of the pipeline industry, \$683 is likely a relatively small figure in relation to operator revenues,

however these additional clarifications are needed to ensure that RSPA's RFA certification is in compliance with the Regulatory Flexibility Act.

These errors in the certification of the proposed rule should be addressed by RSPA in the preamble to the Final Rule and additional clarification statements added to the cost analysis and RFA sections as noted above.

If you require additional information or any other assistance, feel free to contact Claudia Rodgers at 202-205-6533.

Sincerely,

Susan M. Walthall
Chief Counsel for Advocacy

Claudia Rayford Rodgers
Asst. Chief Counsel for Advocacy