

section 1404 of the Health Care and Education Reconciliation Act of 2010 (HCERA), Public Law 111–152 (124 Stat. 1029 (2010)).

Need for Correction

As published, REG–112805–10, contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of public hearing on notice of proposed rulemaking by cross-reference to temporary regulations (REG–112805–10) which was the subject of FR Doc. 2012–19074, is corrected as follows:

On page 46653, column 2, in the preamble, under the caption **ADDRESSES**, line five, the language “DC 20224. Send Submissions to” is corrected to read “DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Send submissions to”.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2012–19730 Filed 8–10–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 190, 192, 193, 195, and 199

[Docket No. PHMSA–2012–0102]

RIN 2137–AE29

Pipeline Safety: Administrative Procedures; Updates and Technical Corrections

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking updates the administrative civil penalty maximums for violation of the pipeline safety regulations to conform to current law, updates the informal hearing and adjudication process for pipeline enforcement matters to conform to current law, amends other administrative procedures used by PHMSA personnel, and makes other technical corrections and updates to certain administrative procedures. The proposed amendments do not

impose any new operating, maintenance, or other substantive requirements on pipeline owners or operators.

DATES: Persons interested in submitting written comments on the rule amendments proposed in this document must do so by September 12, 2012. PHMSA will consider comments filed after this date so far as practicable.

ADDRESSES: Comments should reference Docket No. PHMSA–2012–0102 and may be submitted in the following ways:

- *Web Site:* <http://www.regulations.gov>.

This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.

- *Fax:* 1–202–493–2251.

• *Mail:* U.S. Department of Transportation (DOT) Docket Operations Facility (M–30), West Building, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* DOT Docket Operations Facility, West Building, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays

Instructions: Identify the docket number, PHMSA–2012–0102, at the beginning of your comments. If you mail your comments, submit two copies. In order to confirm receipt of your comments, include a self-addressed, stamped postcard.

Note: All comments are posted electronically in their original form, without changes or edits, including any personal information.

Privacy Act Statement

Anyone can search the electronic comments associated with any docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). DOT’s complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000, (65 FR 19477).

FOR FURTHER INFORMATION CONTACT:

James Pates, PHMSA, Office of Chief Counsel, 202–366–0331, james.pates@dot.gov; Kristin T.L. Baldwin, Office of Chief Counsel, 202–366–6139, kristin.baldwin@dot.gov; or Larry White, PHMSA, Office of Chief Counsel, 202–366–9093, lawrence.white@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

Effective January 3, 2012, the Pipeline Safety, Regulatory Certainty, and Job

Creation Act of 2011 (Pub. L. 112–90) (the Act) increased the maximum administrative civil penalties for violation of the pipeline safety laws and regulations to \$200,000 per violation per day of violation, with a maximum of \$2,000,000 for a related series of violations. The Act also imposed certain requirements for the conduct of informal administrative enforcement hearings including, among other things: convening hearings before a presiding official, an attorney on the staff of the Deputy Chief Counsel; providing an opportunity for a respondent to arrange for a hearing transcript; ensuring a separation of functions between agency employees involved with the investigation or prosecution of an enforcement case and those involved in deciding the case; and prohibiting ex parte communications. The Act also provided PHMSA with new enforcement authority for oil spill response plan compliance under section 4202 of the Oil Pollution Act of 1990 (33 U.S.C. 1321(j)).

In accordance with the Act, PHMSA proposes to: update the administrative civil penalty maximums and the informal hearing process for pipeline enforcement matters to conform to current law and to amend other administrative procedures used by PHMSA personnel; amend the criminal enforcement provisions to conform to current law and practice; make corrections to the special permit provisions in the procedures for adoption of rules; implement the new enforcement authority for Part 194 oil spill response plans; and make certain technical amendments and corrections. The proposed amendments do not impose any new operating, maintenance, or other substantive requirements on pipeline owners or operators.

II. Proposed Amendments to Part 190

A. Administrative Civil Penalties and the Informal Hearing and Enforcement Process

Maximum administrative civil penalties. Section 2 of the Pipeline Safety Act of 2011 increased the maximum administrative civil penalties for violation of the pipeline safety laws and regulations to \$200,000 per violation per day, with a maximum of \$2,000,000 for a related series of violations. PHMSA proposes to amend 49 CFR 190.223 to reflect this increase. PHMSA proposes to apply the new administrative civil penalty maximums in cases involving violations that occur or are discovered after January 3, 2012. The proposed amendment also removes

outdated penalty provisions for violations involving offshore gathering lines and liquefied natural gas facilities and clarifies the applicability of penalties for violations of the terms of an enforcement order.

Presiding Official. Section 20(a)(1)(A) of the Act requires PHMSA to issue regulations requiring hearings conducted under 49 U.S.C. chapter 601 for the issuance of corrective action orders (CAOs), safety orders, compliance orders, and civil penalties to be convened before a presiding official. The pipeline enforcement process found in 49 CFR part 190, used successfully by PHMSA for many years, already includes the use of such a presiding official for informal hearings. The amendment proposes to codify existing practice. This process provides pipeline operators with the right to receive notice of any alleged violations identified during an inspection or investigation; to respond to the notice, including the opportunity to request an informal hearing or otherwise contest any alleged violations; to examine the evidence; to be represented by counsel; to provide any relevant information to the proposed penalty amount; and to petition for reconsideration of the agency's decision.

Although current regulations already provide that hearings are held before a presiding official, section 20(a)(2) of the Act requires that PHMSA issue regulations both defining the term "presiding official" and requiring the presiding official to be an attorney on the staff of the Deputy Chief Counsel who is not engaged in investigative or prosecutorial functions. PHMSA proposes to conform to this requirement by amending the existing definition of "presiding official" in § 190.3 and by adding a new § 190.212 concerning the presiding official's powers and duties.

The proposed regulations will specify the powers and duties of the presiding official and provide that, if the dedicated presiding official is unavailable, the Deputy Chief Counsel may delegate the duties of the presiding official to another attorney in the Office of Chief Counsel who has no prior involvement in the case and who will be supervised by the Deputy Chief Counsel. PHMSA also proposes to amend § 190.211(a) to clarify that this section applies to any hearing relating to civil penalty assessments, compliance orders, safety orders, or CAOs.

Hearing transcript. Section 20(a)(1)(B) of the Act requires PHMSA to issue regulations providing the opportunity for any party requesting a hearing to arrange for a transcript of the hearing, at the party's expense. Although it is

currently PHMSA's practice to permit a respondent to make arrangements for a transcript at the respondent's cost, this is not explicitly stated in Part 190. PHMSA proposes to amend § 190.211 to provide that a respondent may arrange for a hearing to be recorded or transcribed at its own cost. PHMSA further proposes that an accurate copy of the recording or transcript must be submitted for the official record.

Separation of functions and prohibition on ex parte communications. Section 20(a)(1)(D) of the Act requires PHMSA to issue regulations implementing a separation of functions between agency employees involved with the investigation and prosecution of an enforcement case and those involved in deciding the case. PHMSA's current practice is to ensure that personnel involved in deciding an enforcement case are not involved in determining the allegations to be made in that case or preparing the Notice of Probable Violation or other type of enforcement action. On July 12, 2011, PHMSA explained its separation of functions policy in a statement published in the **Federal Register** (76 FR 40820). In order to conform Part 190 to the current law and existing agency practice, PHMSA proposes to add a new § 190.210, titled: "Separation of functions." Paragraph (a) of the new section proposes that an agency employee involved in the investigation or prosecution of an enforcement case may not participate in the decision of that case or a factually related case, but may participate as a witness or counsel at a hearing, as set forth in subpart B. Likewise, paragraph (a) proposes to require that an agency employee who prepares the decision in an enforcement case may not have served in an investigative or prosecutorial capacity in that case or a factually related case.

Section 20(a)(1)(E) of the Act requires PHMSA to issue regulations prohibiting ex parte communications that are relevant to the question to be decided in an enforcement case. An ex parte communication is a communication between a party to a pending case and the decision maker regarding an issue in that case occurring outside the presence of the other parties and without prior notice and opportunity for all parties to provide comment or rebuttal. In the aforementioned July 12, 2011, PHMSA policy statement discussed earlier in this preamble, the agency explained that ex parte communications with the presiding official are not permitted by the operator, its counsel, or agency staff involved in the investigation and prosecution of the case. This prohibition applies to all communication regarding

information, facts, or arguments involving an issue in the case, but not to routine administrative matters, such as scheduling the hearing or clarification of the enforcement process.

To incorporate this prohibition into Part 190, PHMSA proposes to add paragraph (b) to the newly created § 190.210 enjoining any party to an enforcement proceeding (e.g., respondent, agency employees serving in an investigative or prosecutorial capacity, representatives of either party, etc.) from communicating privately with the decision maker concerning information that is material to the question to be decided. Notwithstanding this addition, parties would be allowed to communicate freely with the presiding official regarding procedural or administrative issues, such as scheduling a hearing.

Expedited review of corrective action orders. Section 20(a)(1)(C) of the Act requires PHMSA to issue regulations ensuring "expedited review" of any CAO issued without prior notice pursuant to 49 U.S.C. 60112(e). Section 20(a)(3) also requires the agency to define the term "expedited review" for purposes of this regulation. The procedural regulations for issuance of a CAO after notice and opportunity for hearing are outlined in § 190.233. Under paragraph (b) of that regulation, PHMSA may waive the requirement for prior notice and opportunity for hearing if a failure to do so would result in the likelihood of serious harm to life, property, or the environment. In cases where an order is issued without prior notice, paragraph (b) already requires that an opportunity for a hearing be provided to the respondent as soon as is practicable after issuance of the order. PHMSA typically schedules hearings within 10 calendar days, except where the respondent requests postponement for good cause.

The current process works well both to ensure that an operator has a timely opportunity for a post-order hearing and that PHMSA acts expeditiously to render a final determination on the CAO. Therefore, PHMSA proposes to conform paragraph § 190.233(b) to current law by defining the term "expedited review" for purposes of a CAO issued without prior notice. In this proposed "expedited review," the respondent must either request such review by answering the order in writing or by requesting a hearing. The Associate Administrator, as soon as practicable following issuance of the order, will decide whether the order should remain in effect or be terminated. Once the determination is issued, the expedited review process is

complete. Issuance of the decision will occur as soon as is practicable.

Other amendments to enforcement process. PHMSA also proposes other technical amendments and updates to improve the clarity and efficiency of the enforcement regulations and to otherwise conform to current practice. These proposed amendments include:

1. Amending § 190.7(a), relating to subpoenas and witness fees, to clarify that PHMSA has the authority to issue subpoenas for any reason to carry out its duties at any time, both during the investigative phase of an enforcement action and pursuant to a hearing.

2. Amending § 190.11(a)(1), relating to the availability of informal guidance on the pipeline safety regulations, to remove the requirement that “All messages will receive a response by the following business day,” since the Office of Pipeline Safety (OPS) is not always able to provide telephonic guidance or interpretive assistance on pipeline regulations by the following business day.

3. Amending § 190.11(a) to revise paragraph (a)(1) and remove paragraph (a)(2) to reflect the current practice on obtaining telephonic and internet assistance from OPS.

4. Amending § 190.11(b) to remove paragraph (b)(2) to reflect the current practice on obtaining written interpretations from OPS.

5. Amending § 190.201, relating to the purpose and scope of subpart B, to clarify that these enforcement procedures encompass the enforcement of 49 U.S.C. 60101 *et seq.*, section 4202 of the Oil Pollution Act of 1990 (33 U.S.C. 1321(j)), and any PHMSA regulation or order issued thereunder.

6. Amending § 190.203(c), relating to inspections and investigations, to clarify that an OPS request for specific information to an owner or operator may be issued at any time and is not limited to a request following an inspection.

7. Amending § 190.203(e) to provide that if a representative of DOT investigates an accident or incident involving a pipeline facility, the owner or operator of the facility must provide all records and information pertaining to the accident or incident to a representative of DOT, including integrity management plans and test results. Pursuant to this proposed change, the owner or operator of the facility would be required to provide all reasonable assistance in the investigation of the accident or incident. Civil penalties may be assessed for obstructing an OPS inspection or investigation, in accordance with section 2 of the Act.

8. Amending §§ 190.205, 190.207, 190.217, 190.219, 190.221, and 190.223, relating to enforcement actions, to provide that OPS may take varied actions under section 4202 of the Oil Pollution Act of 1990 (33 U.S.C. 1321(j)).

9. Amending § 190.211, relating to hearings, to clarify the manner in which informal hearings are conducted, including: A respondent may withdraw a hearing request in writing and, if permitted by the presiding official, supplement the record with a written submission in lieu of a hearing; a respondent must submit the material it intends to use to rebut the allegation of violation at least 10 calendar days prior to the date of the hearing; the hearing is conducted informally; OPS, as well as the respondent, may present evidence and call witnesses at a hearing; and both parties may request permission to submit additional documents after the hearing.

10. Amending § 190.211(c) to provide that all hearings in civil penalty cases under \$25,000 (currently \$10,000) will be held by telephone conference, unless either party requests an in-person hearing. This proposed change recognizes the increase in the size of civil penalty assessments generally and minimizes travel expense for both parties. The presiding official will also have the flexibility to order a video conference in addition to a telephonic hearing.

11. Amending § 190.211(d) to clarify that all evidentiary material on which OPS intends to rely at a hearing, to the extent possible, must be provided at respondent's request prior to a hearing in order to ensure the respondent's full access to the evidentiary record upon which final orders are based.

12. Amending § 190.213(b), relating to final orders, to clarify that the presiding official in a § 190.211 hearing case or an attorney from the Office of Chief Counsel in a non-hearing case provides a recommended decision to the Associate Administrator proposing findings on all material issues.

13. Amending § 190.213(d) and (e) to remove the provision that an operator may file a judicial appeal of a final order without first filing a petition for reconsideration. This proposed change will ensure that the parties have an administrative opportunity to correct errors prior to the filing of a judicial appeal.

14. Amending § 190.215, relating to petitions for reconsideration, by moving the language in this section to § 190.249 at the end of subpart B and expanding its scope to cover all final orders, corrective action orders, notices of

amendment, and safety orders. This proposed change clarifies that a respondent must file a petition to exhaust its administrative remedies. Additionally, a proposed provision on the filing period and the standard of judicial review has been included in order to conform to 49 U.S.C. 60119.

15. Amending the existing language in § 190.215(a) that is moved to § 190.249 to remove the requirement that a respondent file multiple copies of a petition; to allow 30, rather than 20, calendar days from receipt of service of a final order to file a petition for reconsideration; and to indicate that all petitions must be filed with the Associate Administrator, with a copy to the Office of Chief Counsel.

16. Amending § 190.219, relating to consent orders, to expand this section to provide that consent orders may also be used to resolve CAOs and safety orders.

17. Amend §§ 190.223(b) and 190.229(b), relating to civil and criminal penalties, to remove obsolete civil and criminal penalty provisions for violations involving offshore gathering lines.

18. Amending § 190.225(a), relating to civil penalty assessment considerations, to remove paragraph (a)(4) relating to “ability to pay” as a penalty assessment factor, to conform to the Act.

19. Amending § 190.233(b) and (c), relating to CAOs, to provide an expedited process for setting hearings and issuing decisions on CAOs and notices of proposed CAOs. This proposal also includes an expedited process for handling petitions for reconsideration to challenge CAOs, to conform to the Act.

B. Criminal Enforcement

PHMSA proposes to amend the criminal enforcement provisions as follows:

1. Relocating the criminal enforcement sections to a new “Subpart C—Criminal Enforcement.”

2. Amending the language in existing § 190.229 that is moved to § 190.291, relating to criminal penalties, to remove outdated maximum criminal penalty amounts for each criminal offense and insert “fined under Title 18” to conform to current 49 U.S.C. 60123.

C. Procedures for Adoption of Rules

PHMSA proposes to amend the procedures for the adoption of rules provisions as follows:

1. Redesignating current Subpart C, *Procedures for Adoption of Rules*, as Subpart D.

2. Amending § 190.207(a), relating to Notices of Probable Violation (NOPV), to clarify that a NOPV may be issued for

violation of a special permit, as a special permit is an agency order that is enforceable through a NOPV.

3. Amending § 190.239 to include a process for filing petitions for reconsideration on safety orders.

4. Amending § 190.337 to remove paragraph (b), relating to the reconsideration of petitions for rulemaking, to remove the target times for the Associate Administrator to act on petitions for reconsideration, to conform to actual practice.

5. Amending § 190.341, relating to special permits, to clarify that PHMSA may issue a NOPV for violations of a special permit.

D. Technical Amendments and Corrections

PHMSA proposes to make the following technical amendments and corrections to Part 190:

1. Amending Part 190 to remove all references to 49 U.S.C. 5101, to update Web sites addresses, telephone numbers, and postal addresses, and to eliminate other incorrect references.

2. Amending Part 190 to remove the term “PHMSA” from the phrases “Administrator, PHMSA” and “Chief Counsel, PHMSA” throughout Part 190 and remove the term “OPS” from the phrase “Associate Administrator, OPS.”

3. Amending § 190.3 to define the terms “Associate Administrator,” “Chief Counsel,” “Day,” and “Operator.”

4. Amending § 190.7(d) to harmonize the service of subpoenas with the service of other documents under § 190.5 to reflect that service by hand, certified mail, or registered mail is complete upon mailing.

5. Amending § 190.203(b)(6) and other sections to eliminate the exclusive use of the masculine pronouns “him” and “his” or to define the term to include both masculine and feminine.

6. Amending § 190.205 to clarify that the Associate Administrator or his or her designee(s) issue warning letters and that an operator may respond to a warning letter.

7. Amending § 190.207(a) to clarify that a NOPV may contain a combination of warning items, allegations of violation, proposed civil penalties, and proposed compliance orders for a probable violation of section 4202 of the Oil Pollution Act of 1990 (33 U.S.C. 1321(j)).

8. Amending § 190.207(c) to clarify that the Associate Administrator or his or her designee(s) may amend a NOPV but must provide an additional opportunity for response.

9. Amending § 190.209(a)(1), relating to response options to NOPVs, to clarify that if an operator responds by paying

a proposed civil penalty, such action serves to close only that particular allegation of violation and not the entire case.

10. Amending § 190.209(a) to clarify that in responding to a NOPV, an operator may contest it in writing without requesting an in-person hearing.

11. Amending § 190.209(c) to correct a typographical error by changing the reference from paragraph (c) to paragraph (b).

12. Amending language in existing § 190.215(a), which is moved to § 190.249, to clarify that a petition for reconsideration must include an explanation as to why the final order should be reconsidered, rather than an explanation of why the “effectiveness” of the final order should be stayed.

13. Amending § 190.223(a) to clarify that the term “civil penalty” refers to “administrative” civil penalties.

14. Amending § 190.227(a), relating to the payment of penalties, to allow payment of penalties under \$10,000 to be made via “www.pay.gov” and to provide the correct address.

15. Amending §§ 190.233 to clarify that CAOs are based upon a determination that a particular facility “is or would be hazardous,” which tracks the statutory language in 49 U.S.C. 60112, and to clarify that the closure of a CAO “terminates” it, as opposed to “rescinding” it.

16. Amending §§ 190.239 and 190.341 to italicize the questions at the beginning of each lettered paragraph.

17. Amending § 190.319, relating to extensions of time for rulemaking comment periods, to clarify that petitions for extensions of time to file comments must be addressed to PHMSA, as provided in § 190.309.

18. Amending § 190.321, relating to the contents of written comments, to remove the requirement to submit multiple copies of a rulemaking comment.

19. Amending § 190.327(b), relating to hearings on proposed rulemakings, to clarify that procedures for rulemaking hearings do not apply to other types of hearings by deleting the phrase “under this part” and inserting “under this subpart.”

20. Amending § 190.335(a) and removing § 190.338(c), relating to the reconsideration of petitions for rulemaking and appeals, to remove the requirement to submit multiple copies of each.

21. For administrative purposes, §§ 190.241, 190.243, 190.245, and 190.247 are added and reserved.

22. Amending §§ 192.603(c), 193.2017(b), 195.402(b), and 199.101(b)

to change the reference to § 190.237 to § 190.206.

III. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This notice of proposed rulemaking is published under the authority of the Federal Pipeline Safety Law (49 U.S.C. 60101 *et seq.*). Section 60102 authorizes the Secretary of Transportation to issue regulations governing design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Section 60102(l) of the Federal Pipeline Safety Law states that the Secretary shall, to the extent appropriate and practicable, update incorporated industry standards that have been adopted as part of the Federal pipeline safety regulations.

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under Section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. This proposed rule is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). Executive Orders 12866 and 13563 require agencies to regulate in the most cost effective manner, to make a reasoned determination that the benefits of the intended regulation justify its costs, and to develop regulations that impose the least burden on society. As this proposed rule involves agency practice and procedure, proposes to conform agency procedural requirements to current public law, and does not recommend imposing any new substantive requirements on operators or the public, it has no significant economic impact on regulated entities.

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This proposed rule does not introduce any regulation that: (1) Has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on state and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Further, this proposed rule does not have an impact on federalism that warrants preparation of a federalism assessment.

D. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). This proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments; therefore, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Executive Order 13211

This proposed rule is not a significant energy action under Executive Order 13211. It is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant, adverse effect on the supply, distribution, or use of energy. Furthermore, this proposed rule has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

F. Regulatory Flexibility Act

As this proposed rule updates the Part 190 procedures in accordance with current public law and will have no direct or indirect economic impacts for government units, businesses, or other organizations, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

This proposed rule contains no new information collection requirements or additional paperwork burdens. Therefore, submitting an analysis of the burdens to OMB pursuant to the Paperwork Reduction Act is unnecessary.

H. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more, as adjusted for inflation, to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

As this proposed rule amends agency administrative practice and procedure and does not impose any new substantive environmental requirements on operators or the public or change the environmental status quo in any way,

there are no significant environmental impacts associated with this rule.

List of Subjects

49 CFR Part 190

Administrative Practice and procedure; Penalties.

49 CFR Part 192

Pipeline safety, Fire Prevention, Security measures.

49 CFR Part 193

Pipeline safety, Fire prevention, Security measures.

49 CFR Part 195

Ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 199

Drug testing, alcohol misuse.

For the reasons discussed in the preamble, PHMSA proposes to amend 49 CFR Subchapter C as follows:

PART 190—PIPELINE SAFETY PROGRAMS AND RULEMAKING PROCEDURES

1. The authority citation for part 190 is revised to read as follows:

Authority: 33 U.S.C. 1321(b); 49 U.S.C. 60101 et seq.; 49 CFR 1.53.

PART 190—[AMENDED]

2. Part 190 is amended by revising the title to read:

PART 190—PIPELINE SAFETY ENFORCEMENT AND REGULATORY PROCEDURES.

PART 190—[AMENDED]

3. In part 190, revise all references to "Associate Administrator, PHMSA" to read "Associate Administrator".

4. In part 190, revise all references to "Chief Counsel, PHMSA" to read "Chief Counsel".

5. In part 190, revise all references to "Associate Administrator, OPS" to read "Associate Administrator".

§ 190.1 [Amended]

6. In § 190.1, paragraph (a) is amended by removing the phrase "and 49 U.S.C. 5101 et seq. (the hazardous material transportation laws)".

7. In § 190.3, the definition of "Presiding Official" is revised and the new definitions for "Associate Administrator," "Chief Counsel," "Day," and "Operator" are added in alphabetical order to read as follows:

§ 190.3 Definitions.

* * * * *

Associate Administrator means the Associate Administrator for Pipeline Safety.

Chief Counsel means the Chief Counsel of the PHMSA.

Day means a 24-hour period ending at 11:59 p.m.

* * * * *

Operator means any or all of the owners or operators.

* * * * *

Presiding official means the person who conducts any hearing relating to civil penalty assessments, compliance orders, safety orders, or corrective action orders and who has the duties and powers set forth in § 190.212.

* * * * *

8. In § 190.7, paragraphs (a) and (d) are revised to read as follows:

§ 190.7 Subpoenas; witness fees.

(a) The Administrator, the Chief Counsel, or an official designated by the Administrator may sign and issue subpoenas individually on his or her own initiative at any time. Such times may include during an inspection or investigation or, upon request and adequate showing by a participant to an enforcement proceeding, that the information sought will materially advance the proceeding.

* * * * *

(d) Service of a subpoena upon the person named in the subpoena is achieved by delivering a copy of the subpoena to the person and by paying the fees for one day's attendance and mileage as specified by paragraph (g) of this section. Service of a subpoena can also be made by certified or registered mail to the person at the last known address. Service is complete upon mailing. When a subpoena is issued at the instance of any officer or agency of the United States, fees and mileage need not be tendered at the time of service. Delivery of a copy of a subpoena and tender of the fees to a natural person may be made by handing them to the person, leaving them at the person's office with a person in charge, leaving them at the person's residence with a person of suitable age and discretion residing there, or by any method whereby actual notice is given to the person and the fees are made available prior to the return date.

* * * * *

9. In § 190.11, paragraphs (a) and (b) are revised to read as follows:

§ 190.11 Availability of informal guidance and interpretive assistance.

(a) Availability of telephonic and Internet assistance. PHMSA has

established a Web site and a telephone line to OPS headquarters where information on and advice about compliance with the pipeline safety regulations specified in 49 CFR parts 190–199 is available. The Web site and telephone line are staffed by personnel from PHMSA’s OPS from 9:00 a.m. through 5:00 p.m., Eastern Time, Monday through Friday, with the exception of Federal holidays. When the lines are not staffed, individuals may leave a recorded voicemail message or post a message on the OPS Web site. The telephone number for the OPS information line is (202) 366–4595 and the OPS Web site can be accessed via the Internet at <http://phmsa.dot.gov/pipeline>

(b) *Availability of written interpretations.* A written regulatory interpretation, response to a question, or an opinion concerning a pipeline safety issue may be obtained by submitting a written request to the Office of Pipeline Safety (PHP–30), PHMSA, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. The requestor must include his or her return address and should also include a daytime telephone number. Written requests should be submitted at least 120 days before the time the requestor needs a response.

* * * * *

10. In § 190.201, paragraph (a) is revised to read as follows:

§ 190.201 Purpose and scope.

(a) This subpart describes the enforcement authority and sanctions exercised by the Associate Administrator for achieving and maintaining pipeline safety and compliance under 49 U.S.C. 60101 *et seq.*, section 4202 of the Oil Pollution Act of 1990 (33 U.S.C. 1321(j)), and any PHMSA regulation or order issued thereunder. It also prescribes the procedures governing the exercise of that authority and the imposition of those sanctions.

* * * * *

11. In § 190.203, paragraph (b)(6) and paragraphs (c), (e), and (f) are revised to read as follows:

§ 190.203 Inspections and investigations.

* * * * *

(b) * * *

(6) Whenever deemed appropriate by the Associate Administrator, or his or her designee.

(c) If the Associate Administrator believes that further information is needed to determine appropriate action, the Associate Administrator may notify the pipeline operator in writing that the operator is required to provide specific

information within a period specified by the Associate Administrator, but no later than 30 days from the time the notification is received by the operator. The notification must provide a reasonable description of the specific information required.

* * * * *

(e) If a representative of the U.S. Department of Transportation inspects or investigates an incident involving a pipeline facility, the operator must make available to the representative all records and information that pertain to the incident in any way, including integrity management plans and test results. The operator must provide all reasonable assistance in the investigation. Any person who obstructs an inspection or investigation by taking actions that were known or reasonably should have been known to prevent, hinder, or impede an investigation without good cause will be subject to administrative civil penalties under this subpart.

(f) When OPS determines that the information obtained from an inspection or from other appropriate sources warrants further action, OPS may initiate one or more of the enforcement proceedings prescribed in this subpart.

12. Section 190.205 is revised to read as follows:

§ 190.205 Warning letters.

Upon determining that a probable violation of 49 U.S.C. 60101 *et seq.*, section 4202 of the Oil Pollution Act of 1990 (33 U.S.C. 1321(j)), or any regulation or order issued thereunder has occurred, the Associate Administrator or his or her designee(s) may issue a Warning Letter notifying the owner or operator of the probable violation and advising the owner or operator to correct it or be subject to potential enforcement action under this subpart. The owner or operator may submit a response to the Warning Letter but is not required to.

13. Add § 190.206 to subpart B to read as follows:

§ 190.206 Amendment of plans or procedures.

(a) A Regional Director begins a proceeding to determine whether an operator’s plans or procedures required under parts 192, 193, 194, 195, and 199 of this subchapter are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice will specify the alleged inadequacies and the proposed action for revision of the plans or procedures and provide an opportunity for a hearing under § 190.211 of this Part. The notice will allow the operator

30 days after receipt of the notice to submit written comments, revised procedures, or request a hearing. After considering all material presented in writing or at the hearing if applicable, the Associate Administrator determines whether the plans or procedures are inadequate as alleged and orders the required amendment if they are inadequate, or withdraws the notice if they are not. In determining the adequacy of an operator’s plans or procedures, the Associate Administrator may consider:

- (1) Relevant available pipeline safety data;
- (2) Whether the plans or procedures are appropriate for the particular type of pipeline transportation or facility, and for the location of the facility;
- (3) The reasonableness of the plans or procedures; and
- (4) The extent to which the plans or procedures contribute to public safety.

(b) The amendment of an operator’s plans or procedures prescribed in paragraph (a) of this section is in addition to, and may be used in conjunction with, the appropriate enforcement actions prescribed in this subpart.

14. In § 190.207, paragraphs (a) and (c) are revised to read as follows:

§ 190.207 Notice of probable violation.

(a) Except as otherwise provided by this subpart, a Regional Director begins an enforcement proceeding by serving a notice of probable violation on a person and charging that person with a probable violation of 49 U.S.C. 60101 *et seq.*, section 4202 of the Oil Pollution Act of 1990 (33 U.S.C. 1321(j)), or any regulation or order issued thereunder.

* * * * *

(c) The Regional Director may amend a notice of probable violation at any time prior to issuance of a final order under § 190.213. If an amendment includes any new material allegations of fact, proposes an increased civil penalty amount, or proposes new or additional remedial action under § 190.217, the respondent will have the opportunity to respond under § 190.209.

15. In § 190.209, paragraphs (a) and (c) are revised to read as follows:

§ 190.209 Response options.

(a) When the notice contains a proposed civil penalty—

- (1) If respondent is not contesting an allegation of probable violation, pay the proposed civil penalty as provided in § 190.227 and advise the Regional Director of the payment. The payment authorizes PHMSA to make a finding of violation as to the uncontested item(s), with prejudice to the respondent;

(2) If respondent is not contesting an allegation of probable violation but wishes to submit a written explanation, information or other materials respondent believes may warrant mitigation or elimination of the proposed civil penalty, respondent may submit such materials. This authorizes PHMSA to make a finding of violation and to issue a final order under § 190.213;

(3) If respondent is contesting one or more allegations of probable violation but is not requesting a hearing under § 190.211, respondent may submit a written response in answer to the allegations; or

(4) The respondent may request a hearing under § 190.211.

* * * * *

(c) Failure of the respondent to respond in accordance with paragraph (a) of this section or, when applicable, paragraph (b) of this section, constitutes a waiver of the right to contest the allegations in the notice of probable violation and authorizes the Associate Administrator, without further notice to the respondent, to find the facts as alleged in the notice of probable violation and to issue a final order under § 190.213.

* * * * *

16. Add § 190.210 to subpart B to read as follows:

§ 190.210 Separation of functions.

(a) *General* An agency employee who assists in the investigation or prosecution of an enforcement case may not participate in the decision of that case or a factually related one, but may participate as a witness or counsel at a hearing, as set forth in this subpart. Likewise, an agency employee who prepares a decision in an enforcement case may not have served in an investigative or prosecutorial capacity in that case or a factually related one.

(b) *Prohibition on ex parte communications.* A party to an enforcement proceeding, including a respondent, its representative, or an agency employee having served in an investigative or prosecutorial capacity in the proceeding, may not communicate privately with the Associate Administrator or presiding official concerning information that is material to the question to be decided in the proceeding. A party may communicate, however, with the presiding official regarding certain administrative or procedural issues, such as for scheduling a hearing.

17. Section 190.211 is revised to read as follows:

§ 190.211 Hearings.

(a) *General.* This section applies to hearings conducted under this part relating to civil penalty assessments, compliance orders, safety orders, and corrective action orders. A presiding official will convene all hearings conducted under this section.

(b) *Hearing request and statement of issues.* A request for a hearing provided for in this part must be accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations in the notice, the proposed corrective action, or the proposed civil penalty amount. A respondent's failure to specify an issue may result in waiver of the respondent's right to raise that issue at the hearing. The respondent's request must also indicate whether or not the respondent will be represented by counsel at the hearing. A respondent may withdraw a hearing request in writing and, if permitted by the presiding official, supplement the record with a written submission in lieu of a hearing.

(c) *Telephonic and in-person hearings.* A telephone hearing will be held if the amount of the proposed civil penalty or the cost of the proposed corrective action is less than \$25,000, unless the respondent or OPS submits a written request for an in-person hearing. In-person hearings will normally be held at the office of the appropriate PHMSA Region. Hearings may be held by video teleconference if the necessary equipment is available to all parties.

(d) *Request for evidentiary material.* Upon request, to the extent practicable, OPS will provide to the respondent in advance of the hearing all evidentiary material upon which OPS intends to rely or to introduce at the hearing that is pertinent to the issues to be determined. The respondent may respond to or rebut this material at the hearing as set forth in this section.

(e) *Pre-hearing submission.* Respondent must submit all records, documentation, and other written evidence it intends to use to rebut an allegation of violation at least 10 calendar days prior to the date of the hearing, unless another deadline is ordered by the presiding official. Failure to submit the material in advance of the hearing in accordance with this paragraph will waive the respondent's right to introduce the material at the hearing, unless the presiding official finds there is good cause for not timely submitting the materials.

(f) *Conduct of the hearing.* The hearing is conducted informally without strict adherence to rules of evidence. The presiding official regulates the

course of the hearing and gives each party an opportunity to offer facts, statements, explanation, documents, testimony or other items that are relevant and material to the issues under consideration. The parties may call witnesses on their own behalf and examine the evidence and witnesses presented by the other party. After the evidence in the case has been presented, the presiding official may permit discussion on the issues under consideration.

(g) *Transcript.* PHMSA does not prepare a detailed record of the hearing. The respondent may arrange for the hearing to be recorded or transcribed at cost to the respondent, provided the respondent submits an accurate copy of the recording or transcript for the official record.

(h) *Post-hearing submission.* The respondent and OPS may request an opportunity to submit further written material after the hearing for inclusion in the record. The presiding official will allow a reasonable time for the submission of the material and will specify the submission date. If the material is not submitted within the time prescribed, the case will proceed to final action without the material.

(i) *Preparation of decision.* After submission of all materials during and after the hearing, the presiding official prepares a recommended decision in the case. This recommended decision, along with any material submitted during and after the hearing, will be included in the record which is forwarded to the Associate Administrator for issuance of a decision and order.

18. Add § 190.212 to subpart B to read as follows:

§ 190.212 Presiding official, powers, and duties.

(a) *General.* The presiding official for a hearing conducted under § 190.211 is an attorney on the staff of the Deputy Chief Counsel who is not engaged in any investigative or prosecutorial functions, such as the issuance of a notice under this subpart. If the designated presiding official is unavailable, the Deputy Chief Counsel may delegate the powers and duties specified in this section to another attorney in the Office of Chief Counsel with no prior involvement in the matter to be heard who will serve as the presiding official.

(b) *Time and place of the hearing.* The presiding official will set the date, time and location of the hearing. To the extent practicable, the presiding official will accommodate the parties' schedules when setting the hearing. Reasonable

notice of the hearing will be provided to all parties.

(c) *Powers and duties of presiding official.* The presiding official will conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of the proceeding and maintain order. The presiding official has all powers necessary to achieve those ends, including, but not limited to the power to:

(1) Regulate the course of the hearing and conduct of the parties and their counsel;

(2) Receive evidence and inquire into the relevant and material facts concerning the matters that are subject of the hearing;

(3) Require the submission of documents and other information;

(4) Direct that documents or briefs relate to issues raised during the course of the hearing;

(5) Fix the time for filing documents, briefs, and other items;

(6) Prepare a recommended decision; and

(7) Exercise such other authority as is necessary to carry out the responsibilities of the presiding official under this subpart.

19. Section 190.213 is amended by revising paragraph (b)(5), adding paragraph (b)(6) and removing paragraphs (d) and (e) to read as follows:

§ 190.213 Final order.

* * * * *

(b) * * *

(5) In cases involving a § 190.211 hearing, any material submitted during and after the hearing; and

(6) The recommended decision prepared by the presiding official in cases involving a § 190.211 hearing, or prepared by an attorney from the Office of Chief Counsel in cases not involving a hearing, containing proposed findings and determinations on all material issues.

(c) * * *

§ 190.215 [Removed and Reserved]

20. Remove and reserve § 190.215.

21. Section 190.217 is revised to read as follows:

§ 190.217 Compliance orders generally.

When the Associate Administrator has reason to believe that a person is engaging in conduct that violates 49 U.S.C. 60101 *et seq.*, section 4202 of the Oil Pollution Act of 1990 (33 U.S.C. 1321(j)), or any regulation or order issued thereunder, and if the nature of the violation and the public interest warrant, the Associate Administrator may conduct proceedings under §§ 190.207 through 190.213 of this part

to determine the nature and extent of the violations and to issue an order directing compliance.

22. In § 190.219, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 190.219 Consent order.

(a) At any time prior to the issuance of a compliance order under § 190.217, a corrective action order under § 190.233, or a safety order under § 190.239, the Associate Administrator and the respondent may agree to dispose of the case by execution of a consent agreement and order which may be jointly executed. Upon execution, the consent order is considered a final order under § 190.213.

* * * * *

(c) The proposed execution of a consent agreement and order arising out of a corrective action order under § 190.233 will comply with the notification procedures set forth in 49 U.S.C. 60112(c).

23. Section 190.221 is revised to read as follows:

§ 190.221 Civil penalties generally.

When the Associate Administrator has reason to believe that a person has committed an act violating 49 U.S.C. 60101 *et seq.*, section 4202 of the Oil Pollution Act of 1990 (33 U.S.C. 1321(j)), or any regulation or order issued thereunder, proceedings under §§ 190.207 through 190.213 may be conducted to determine the nature and extent of the violations and to assess and, if appropriate, compromise a civil penalty.

24. Section 190.223 is revised to read as follows:

§ 190.223 Maximum penalties.

(a) Any person who is determined to have violated a provision of 49 U.S.C. 60101 *et seq.*, section 4202 of the Oil Pollution Act of 1990 (33 U.S.C. 1321(j)), or any regulation or order issued thereunder after January 3, 2012, is subject to an administrative civil penalty not to exceed \$200,000 for each violation for each day the violation continues, except that the maximum administrative civil penalty may not exceed \$2,000,000 for any related series of violations.

(b) Any person who is determined to have violated any standard or order under 49 U.S.C. 60129 shall be subject to a civil penalty not to exceed \$1,000, which shall be in addition to any other penalties to which such person may be subject under paragraph (a) of this section.

(c) No person will be subject to a civil penalty under this section for the

violation of any provision of 49 U.S.C. 60101 *et seq.* or any regulation issued thereunder resulting in an order being issued under §§ 190.217, 190.219 or 190.233 and a violation of the requirements of such an order if both violations are based on the same act, except that failure to comply with the terms of such orders constitutes a different act.

25. In § 190.225, paragraphs (a)(1), (a)(2), (a)(3), (a)(4) and (a)(5) are revised to read as follows:

§ 190.225 Assessment considerations.

* * * * *

(a) The Associate Administrator shall consider:

(1) The nature, circumstances and gravity of the violation, including adverse impact on the environment;

(2) The degree of the respondent's culpability;

(3) The respondent's history of prior offenses;

(4) Any good faith by the respondent in attempting to achieve compliance;

(5) The effect on the respondent's ability to continue in business; and

* * * * *

26. In § 190.227, paragraph (a) is revised to read as follows:

§ 190.227 Payment of penalty.

(a) Except for payments exceeding \$10,000, payment of a civil penalty proposed or assessed under this subpart may be made by certified check or money order (containing the CPF Number for the case), payable to "U.S. Department of Transportation," to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-341), P.O. Box 25770, Oklahoma City, OK 73125, by wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury, or via "www.pay.gov." Payments exceeding \$10,000 must be made by wire transfer.

* * * * *

§ 190.229 [Removed and Reserved]

27. Remove and reserve § 190.229.

§ 190.231 [Removed and Reserved]

28. Remove and reserve § 190.231.

29. In § 190.233, paragraphs (a), (b), (c)(3), (c)(4), (f)(1), and (g) are revised to read as follows:

§ 190.233 Corrective action orders.

(a) Except as provided by paragraph (b) of this section, if the Associate Administrator finds, after reasonable notice and opportunity for hearing in accord with paragraph (c) of this section and § 190.211, a particular pipeline

facility is or would be hazardous to life, property, or the environment, the Associate Administrator may issue an order pursuant to this section requiring the owner or operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other appropriate action.

(b) The Associate Administrator may waive the requirement for notice and opportunity for hearing under paragraph (a) of this section before issuing an order whenever the Associate Administrator determines that the failure to do so would result in the likelihood of serious harm to life, property, or the environment. When an order is issued under this paragraph, a respondent that elects to contest the order may obtain expedited review of the order either by answering in writing to the order or requesting a § 190.211 hearing to be held as soon as practicable in accordance with paragraph (c)(2) of this section. For purposes of this section, the term "expedited review" is defined as the process for making a prompt determination of whether the order should remain in effect or be terminated, in accordance with paragraph (g) of this section. The expedited review of an order issued under this paragraph will be complete upon issuance of such determination.

(c) * * *

(3) A hearing under this section will be conducted pursuant to § 190.211.

(4) After conclusion of a hearing under this section, the presiding official will submit a recommendation to the Associate Administrator as to whether or not a hazardous condition that exists or may exist requiring corrective action expeditiously. Upon receipt of the recommendation, the Associate Administrator will proceed in accordance with paragraphs (d) through (h) of this section. If the Associate Administrator finds the facility is or would be hazardous to life, property, or the environment, the Associate Administrator, OPS issues a corrective action order in accordance with this section or continues a corrective action order already issued under paragraph (b) of this section. If the Associate Administrator does not find the facility is or would be hazardous to life, property, or the environment, the Associate Administrator will withdraw the allegation of the existence of a hazardous facility contained in the notice or will terminate a corrective action order issued under paragraph (b), and promptly notify the owner or

operator in writing by service as prescribed in § 190.5.

* * * * *

(f) * * *

(1) A finding that the pipeline facility is or would be hazardous to life, property, or the environment.

* * * * *

(g) The Associate Administrator will terminate a corrective action order whenever the Associate Administrator determines that the facility is no longer hazardous to life, property, or the environment. If appropriate, however, a notice of probable violation may be issued under § 190.207.

* * * * *

§ 190.237 [Removed and Reserved]

30. Remove and reserve § 190.237.

31. Section 190.239 is amended by revising the heading of paragraphs (a), (b), (c), (d), (e), and (f), and adding paragraph (g) to read as follows:

§ 190.239 Safety orders.

(a) *When may PHMSA issue a safety order?* * * *

(b) *How is an operator notified of the proposed issuance of a safety order and what are its responses options?* * * *

(c) *How is the determination made that a pipeline facility has a condition that poses an integrity risk?* * * *

(d) *What factors must PHMSA consider in making a determination that a risk condition is present?* * * *

(e) *What information will be included in a safety order?* * * *

(f) *Can PHMSA take other enforcement actions on the affected facilities?* * * *

(g) *May I petition for reconsideration of a safety order?* Yes, a petition for reconsideration may be submitted in accordance with § 190.249.

§ 190.241 [Reserved]

32. Add and reserve § 190.241.

§ 190.243 [Reserved]

33. Add and reserve § 190.243.

§ 190.245 [Reserved]

34. Add and reserve § 190.245.

§ 190.247 [Reserved]

35. Add and reserve § 190.247.

36. Add § 190.249 to subpart B to read as follows:

§ 190.249 Petitions for reconsideration.

(a) A respondent may petition the Associate Administrator for reconsideration of a final order issued under § 190.213, a compliance order issued under § 190.217, a corrective action order issued under § 190.233, an order directing amendment of plans or

procedures under § 190.206, or a safety order under § 190.239. The petition must be received no later than 30 days after service of the order upon the respondent and a copy must be provided to the Office of Chief Counsel. Petitions received after that time will not be considered. The petition must contain a brief statement of the complaint and an explanation as to why the order should be reconsidered.

(b) If the respondent requests the consideration of additional facts or arguments, the respondent must submit the reasons they were not presented prior to issuance of the final order.

(c) The Associate Administrator does not consider repetitious information, arguments, or petitions.

(d) The filing of a petition under this section stays the payment of any civil penalty assessed. However, unless the Associate Administrator, OPS otherwise provides, the order, including any required corrective action, is not stayed.

(e) The Associate Administrator may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event the Associate Administrator reconsider a final order, a final decision on reconsideration may be issued without further proceedings, or, in the alternative, additional information, data, and comment may be requested by the Associate Administrator as deemed appropriate.

(f) It is the policy of the Associate Administrator to issue notice of the action taken on a petition for reconsideration expeditiously. In cases where a substantial delay is expected, notice of that fact and the date by which it is expected that action will be taken is provided to the respondent upon request and whenever practicable.

(g) The Associate Administrator's decision on reconsideration is the final agency action. Any application for judicial review must be filed no later than 89 days after the issuance of the decision in accordance with 49 U.S.C. 60119(a). Failure to raise an issue in a petition for reconsideration waives the availability of judicial review of that issue.

(h) Judicial review of agency action under 49 U.S.C. 60119(a) will apply the standards of review established in section 706 of title 5.

Subpart C—[Redesignated as Subpart D]

37. Redesignate existing subpart C as new subpart D.

38. Add new subpart C to read as follows:

Subpart C—Criminal Enforcement**§ 190.291 Criminal penalties generally.**

(a) Any person who willfully and knowingly violates a provision of 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder will upon conviction be subject to a fine under title 18 and imprisonment for not more than five years, or both, for each offense.

(b) Any person who willfully and knowingly injures or destroys, or attempts to injure or destroy, any interstate transmission facility, any interstate pipeline facility, or any intrastate pipeline facility used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce (as those terms are defined in 49 U.S.C. 60101 *et seq.*) will, upon conviction, be subject to a fine under title 18, imprisonment for a term not to exceed 20 years, or both, for each offense.

(c) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign, right-of-way marker, or marine buoy required by 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder will, upon conviction, be subject to a fine under title 18, imprisonment for a term not to exceed 1 year, or both, for each offense.

(d) Any person who willfully and knowingly engages in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area; or without considering location information or markings established by a pipeline facility operator; and

(1) Subsequently damages a pipeline facility resulting in death, serious bodily harm, or property damage exceeding \$50,000;

(2) Subsequently damages a pipeline facility and knows or has reason to know of the damage but fails to promptly report the damage to the operator and to the appropriate authorities; or

(3) Subsequently damages a hazardous liquid pipeline facility that results in the release of more than 50 barrels of product; will, upon conviction, be subject to a fine under title 18, imprisonment for a term not to exceed 5 years, or both, for each offense.

(e) No person shall be subject to criminal penalties under paragraph (a) of this section for violation of any regulation and the violation of any order issued under §§ 190.217, 190.219 or 190.291 if both violations are based on the same act.

§ 190.293 Referral for prosecution.

If an employee of the Pipeline and Hazardous Materials Safety Administration becomes aware of any actual or possible activity subject to criminal penalties under § 190.291, the employee reports it to the Office of the Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590. The Chief Counsel refers the report to OPS for investigation. Upon completion of the investigation and if appropriate, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

39. Section 190.319 is revised to read as follows:

§ 190.319 Petitions for extension of time to comment.

A petition for extension of the time to submit comments must be submitted to PHMSA in accordance with § 190.309 and received by PHMSA not later than 10 days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments. A petition is granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest. If an extension is granted, it is granted to all persons, and it is published in the **Federal Register**.

40. Section 190.321 is revised to read as follows:

§ 190.321 Contents of written comments.

All written comments must be in English. Any interested person should submit as part of written comments all material considered relevant to any statement of fact. Incorporation of material by reference should be avoided; however, where necessary, such incorporated material shall be identified by document title and page.

41. In § 190.327, paragraph (b) is revised to read as follows:

§ 190.327 Hearings.

* * * * *

(b) Sections 556 and 557 of title 5, United States Code, do not apply to hearings held under this subpart. Unless otherwise specified, hearings held under this part are informal, non-adversarial fact-finding proceedings, at which there are no formal pleadings or adverse parties. Any regulation issued in a case in which an informal hearing is held is not necessarily based exclusively on the record of the hearing.

* * * * *

42. In § 190.335, paragraph (a) is revised to read as follows:

§ 190.335 Petitions for Reconsideration.

(a) Except as provided in § 190.339(d), any interested person may petition the Associate Administrator for reconsideration of any regulation issued under this subpart, or may petition the Chief Counsel for reconsideration of any procedural regulation issued under this subpart and contained in this subpart. The petition must be received not later than 30 days after publication of the rule in the **Federal Register**. Petitions filed after that time will be considered as petitions filed under § 190.331. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest.

* * * * *

43. Section 190.337 is revised to read as follows:

§ 190.337 Proceedings on petitions for reconsideration.

The Associate Administrator or the Chief Counsel may grant or deny, in whole or in part, any petition for reconsideration without further proceedings, except where a grant of the petition would result in issuance of a new final rule. In the event that the Associate Administrator or the Chief Counsel determines to reconsider any regulation, a final decision on reconsideration may be issued without further proceedings, or an opportunity to submit comment or information and data as deemed appropriate, may be provided. Whenever the Associate Administrator or the Chief Counsel determines that a petition should be granted or denied, the Office of the Chief Counsel prepares a notice of the grant or denial of a petition for reconsideration, for issuance to the petitioner, and the Associate Administrator or the Chief Counsel issues it to the petitioner. The Associate Administrator or the Chief Counsel may consolidate petitions relating to the same rules.

§ 190.338 [Amended]

44. In § 190.338, paragraph (c) is removed and reserved.

45. Section 190.341 is amended by revising the heading of paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j), and adding paragraph (k) to read as follows:

§ 190.341 Special permits.

(a) *What is a special permit?* * * *

(b) *How do I apply for a special permit?* * * *

(c) *What information must be contained in the application?* * * *

(d) How does PHMSA handle special permit applications? * * *

(e) Can a special permit be requested on an emergency basis? * * *

(f) How do I apply for an emergency special permit? * * *

(g) What must be contained in an application for an emergency special permit? * * *

(h) In what circumstances will PHMSA revoke, suspend, or modify a special permit? * * *

(i) Can a denial of a request for a special permit or a revocation of an existing special permit be appealed? * * *

(j) Are documents related to an application for a special permit available for public inspection? * * *

(k) Am I subject to enforcement action for non-compliance with the terms and conditions of a special permit? Yes. PHMSA inspects for compliance with the terms and conditions of special permits and if a violation is identified, PHMSA will initiate one or more of the enforcement actions under subpart B of this part.

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

46. The authority citation for Part 192 continues to read as follows: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, 60118, and 60137; and 49 CFR 1.53.

47. In § 192.603, paragraph (c) is revised read as follows:

§ 192.603 General provisions.
* * * * *

(c) The *Administrator or the State Agency* that has submitted a current certification under the pipeline safety laws, (49 U.S.C. 60101 *et seq.*) with

respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.206 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

PART 193—LIQUEFIED NATURAL GAS FACILITIES: FEDERAL SAFETY STANDARDS

48. The authority citation for Part 193 continues to read as follows: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

49. In § 193.2017, paragraph (b) is revised read as follows:

§ 192.2017 Plans and procedures.
* * * * *

(b) The *Administrator or the State Agency* that has submitted a current certification under section 5(a) of the Natural Gas Pipeline Safety Act with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.206 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.
* * * * *

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

50. The authority citation for Part 195 continues to read as follows: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60116, 60118, and 60137; and 49 CFR 1.53.

51. In § 195.402, paragraph (b) is revised read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.
* * * * *

(b) The *Administrator or the State Agency* that has submitted a current certification under the pipeline safety laws (49 U.S.C. 60101 *et seq.*) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.206 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.
* * * * *

PART 199—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

52. The authority citation for Part 199 continues to read as follows: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

53. In § 199.101, paragraph (b) is revised read as follows:

§ 199.101 Anti-drug plan.
* * * * *

(b) The *Administrator or the State Agency* that has submitted a current certification under the pipeline safety laws (49 U.S.C. 60101 *et seq.*) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.206 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

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Jeffrey D. Wiese,
Associate Administrator for Pipeline Safety.
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