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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

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

[Docket No. PHMSA-2012-0102; Amdt. Nos. 190-16, 192-118, 193-24, 195-98, 199-25]

RIN 2137-AE92

Pipeline Safety: Administrative Procedures; Updates and Technical Corrections

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

ACTION: Final rule.

SUMMARY: PHMSA is amending the pipeline safety regulations to update the administrative civil penalty maximums for violation of the safety standards to reflect current law, to update the informal hearing and adjudication process for pipeline enforcement matters to reflect current law, and to make other technical corrections and updates to certain administrative procedures. The amendments do not impose any new operating, maintenance, or other substantive requirements on pipeline owners or operators.

DATES: The effective date of these amendments is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

A. Notice of Proposed Rulemaking

On August 13, 2012, PHMSA published a Notice of Proposed Rulemaking (NPRM) under Docket ID PHMSA-2012-0102, (77 FR 48112) notifying the public of the proposed changes to 49 CFR Parts 190, 192, 193, 195, and 199. The amendments proposed in the NPRM were intended to implement mandates in the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Pub. L. 112-90) (the 2011 Act) and to make other technical and administrative corrections. During the 30-day comment period, PHMSA received a total of five comments. Three comments were from trade organizations, including the Interstate Natural Gas Association of America (INGAA), the Association of Oil Pipelines and the American Petroleum Institute (AOPL/API), and the American Gas Association (AGA). One comment was received from a pipeline operator, who solely endorsed the comments of INGAA. The final comment was received from a private citizen.

B. Advisory Committee Meetings

On December 11-13, 2012, the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) met jointly in Alexandria, Virginia. The TPSSC and THLPSSC are statutorily mandated advisory committees under 49 U.S.C. 60115 that provide non-binding

recommendations to PHMSA on proposed safety standards, risk assessments, and safety policies for natural gas and hazardous liquid pipelines. Although the NPRM did not implicate the committees' statutory mandate with regard to proposed safety standards, PHMSA requested input from the committees given the potential impact on administrative enforcement processes.

After considering the NPRM and public comments, the TPSSC recommended approval of the NPRM as proposed. The THLPSSC recommended approval of the NPRM, with unspecified modifications consistent with the public comments and certain principles, including transparency, completeness, increased formality, timeliness, regulatory certainty, and due process.

II. Discussion of Comments

The comments received from the trade organizations and the THLPSSC are discussed below. The comment from the private citizen is not discussed because it was outside the scope of this rulemaking. To facilitate the reader, the following list of contents is provided:

14. § 190.210 Separation of functions (new section).
15. § 190.211 Hearing—exchange of evidentiary material and withdrawal.
16. § 190.211 Hearing—formality.
17. § 190.211 Hearing—transcripts.
18. § 190.211 Hearing—recommended decision.
19. § 190.212 Presiding official, powers, and duties (new section).
20. § 190.213 Final order.
21. § 190.217 Compliance orders generally.
22. § 190.219 Consent order.
23. § 190.221 Civil penalties generally.
24. § 190.223 Maximum penalties.
25. § 190.225 Assessment considerations.
26. § 190.227 Payment of penalty.
27. § 190.233 Corrective action orders.
28. § 190.239 Safety orders.
29. § 190.241 Finality (new section).
30. § 190.243 Petitions for reconsideration (redesignated from § 190.215).

Subpart C—Criminal Enforcement (new Subpart)
31. § 190.291 Criminal penalties generally (redesignated from § 190.229).
32. § 190.293 Referral for prosecution (redesignated from § 190.231).

Subpart D—Procedures for Adoption of Rules (redesignated from Subpart C)
33. § 190.319 Petitions for extension of time to comment.
34. § 190.321 Contents of written comments.
35. § 190.327 Hearings.
36. § 190.335 Petitions for reconsideration.
37. § 190.337 Proceedings on petitions for reconsideration.
38. § 190.338 Appeals.
39. § 190.341 Special permits.

Amendments to Parts 192-199
40. § 192.603 General provisions.
41. § 193.2017 Plans and procedures.
42. § 195.402 Procedural manual for operations, maintenance, and emergencies.
43. § 199.101 Anti-drug plan.

Subpart A—General

1. Purpose and scope (§ 190.1).

The NPRM proposed to amend § 190.1(a) to remove the citation to the hazardous materials transportation laws. PHMSA did not receive any comments and is adopting the

amendment. Consistent with other amendments in this rule, PHMSA is adding a reference to the Federal Water Pollution Control Act (33 U.S.C. 1321) in accordance with section 10 of the 2011 Act.

2. Definitions (§ 190.3).

The NPRM proposed to amend the definition of "Presiding Official" and to add new definitions for "Associate Administrator," "Chief Counsel," "Day," and "Operator." No comments were received regarding the definitions. PHMSA is adopting the definitions with minor changes. A revised definition of "Associate Administrator," which includes his or her delegate, is adopted. The definition of "Day" is revised to clarify that it means a calendar day, unless otherwise noted. PHMSA is also clarifying the definition of a "Respondent" includes the recipient of any enforcement action under Subpart B of Part 190.

3. Service (§ 190.5).

PHMSA did not propose to amend § 190.5, but INGAA requested that PHMSA amend § 190.5(b) by designating specific individuals that may be served with notices, orders, or other PHMSA documents. INGAA proposed that PHMSA adopt a practice under which operators designate certain individuals to receive service and then have a continuing obligation to update that information. INGAA stated that its members could provide this information while updating gas transmission annual reports. INGAA noted that, in the experience of its members, enforcement notices and orders are often served on various field offices and officials without direct responsibility for compliance.

INGAA also proposed that PHMSA modify § 190.5(c) to provide that service by mail is complete upon actual receipt and not upon mailing, as is stated in the current regulatory language. INGAA referenced certain sections of Part 190 in which the response time frame is triggered by respondent's receipt of the relevant document, and other sections where the response period seems to be triggered by mailing. To avoid shortening operators' response times and to establish consistency throughout Part 190, INGAA suggested that PHMSA adopt service upon receipt as the more equitable option.

Response: With regard to designating an individual for service, PHMSA notes that most operators already include the name of a senior executive officer on their annual reports. In response to the comments, however, PHMSA is considering changes to the annual reporting forms to allow all operators to designate a senior executive for the specific purpose of service of enforcement actions. Changes to the annual reporting form would be proposed in a future rulemaking action. In the meantime, as an internal policy, PHMSA now advises that all official notices of enforcement action be addressed to the most senior executive officer (e.g., President or Chief Executive Officer). PHMSA believes this is an appropriate mechanism for ensuring enforcement notices are served on an operator.

With regard to when service is effective, there are certain response deadlines in Part 190 that are triggered upon actual receipt of the document, even though service itself is effective upon mailing by certified mail. For example, a respondent has 30 days from receipt to respond to a notice of probable violation and 20 days from receipt of a final order to pay an assessed civil penalty. By comparison, a respondent has 20 days from service to file a petition for reconsideration under § 190.215 and 10 days from service to request a hearing on a corrective action order under § 190.233. In response to the comment, PHMSA

is amending § 190.243 (formerly § 190.215) and § 190.233 to clarify that the filing periods run from receipt and not the date of mailing. Service of the notice or order in an enforcement proceeding by certified mail will continue to be effective upon mailing, which is consistent with the manner in which other Federal agencies serve such documents. Based on these amendments, PHMSA is not amending § 190.5(c) in the manner suggested by the comment. PHMSA is, however, amending the regulation to remove references to registered mail as that method of service is not presently used.

4. Subpoenas; witness fees (§ 190.7).

PHMSA proposed to amend § 190.7(a) to clarify that the agency is authorized by statute 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. PHMSA also proposed to amend § 190.7(d) to harmonize the service of subpoenas with the service of other documents under § 190.5 to reflect that service by certified mail is complete upon mailing.

Comments: No comments were received with respect to § 190.7(a). AOPL/API objected to the proposed amendment to § 190.7(d) on the basis that it would be inconsistent with (1) the requirement that mailing be completed by certified or registered mail, both of which require signature of the recipient; and (2) the provision in § 190.7(d) that service may be achieved by "any method whereby actual notice is given to the person." AOPL/API asserted that it is inappropriate to deem that service upon mailing achieves "actual notice."

Response: PHMSA is adopting the amendment to § 190.7(a) as proposed. The amendment to § 190.7(d) was proposed to harmonize service of a subpoena with § 190.5,

which states that service is complete upon mailing for documents served by certified mail. Nevertheless, in response to the comments, PHMSA is withdrawing the proposal to amend § 190.7(d). PHMSA is also removing references to registered mail as that method of service is not presently used.

5. Availability of informal guidance and interpretive assistance (§ 190.11).

The NPRM proposed to remove language that the Office of Pipeline Safety (OPS) would respond to inquiries related to the pipeline safety regulations by the next business day because OPS has not always been able to meet this deadline. PHMSA also proposed to remove § 190.11(a)(2) and (b)(2) to eliminate the availability of informal guidance directly from the Office of Chief Counsel (OCC).

Comments: AOPL/API commented that PHMSA should retain § 190.11(a)(2) and (b)(2) to further regulatory certainty, administrative efficiency, and the conservation of agency resources. The comment stated that the availability of written legal interpretations avoids mistaken regulatory interpretations, allows for the allocation of resources towards pipeline safety, and provides parties outside the regulated community with a potential resource. AOPL/API also noted that PHMSA failed to provide an explanation for the agency's proposal to withdraw the availability of guidance and legal interpretations from the OCC.

Response: Under § 190.11, OPS provides guidance regarding compliance with the pipeline safety regulations through telephonic and internet assistance, written regulatory interpretations, and responses to questions or opinions concerning pipeline safety issues. The OCC has customarily provided legal assistance through these processes by assisting

OPS in the development of written responses to requests for interpretations. PHMSA believes having OPS serve as a single point of contact for guidance and interpretive assistance will permit more efficient handling of these types of requests. The OCC will continue to provide legal assistance through this process. Accordingly, PHMSA is adopting the amendments as proposed.

Subpart B—Enforcement

6. Purpose and scope (§ 190.201).

The NPRM proposed to amend § 190.201 to include 33 U.S.C. 1321(j) within the scope of the enforcement procedures enumerated in Subpart B, consistent with section 10 of the 2011 Act. PHMSA received no comments on this proposed amendment. Therefore, PHMSA adopts the amendment as proposed.

7. Inspections and investigations—requests for specific information (§ 190.203).

In the NPRM, PHMSA proposed to revise § 190.203(c) to allow for the issuance of a request for information (sometimes referred to as a "request for specific information" or "RSI") at any time, rather than only pursuant to an inspection, and to require operators to respond to such a request no later than 30 days, rather than 45 days.

Comments: AOPL/API commented that PHMSA should implement both a minimum 15 day response period and a maximum 45 day response deadline, or in the alternative, require the Associate Administrator to extend the proposed deadline upon reasonable request of the operator. Given that an RSI could require the collection of complex and voluminous records, necessitating ongoing collaboration with PHMSA,

AOPL/API opposed shortening the response deadline.

INGAA expressed a concern that the proposed change would impinge on an operator's due process rights by unreasonably circumscribing the ability of an operator to collect the requested information within the allotted time. It also stated that a process for contesting the scope and response deadline should be made explicit in the regulations.

Response: Based on its experience, PHMSA continues to believe that in most cases, operators can reasonably respond to an RSI within 30 days. To address the comments, however, PHMSA is adopting an option for the operator to request an extension of time and to propose an alternative submission date. An operator requesting an extension may request that the deadline for submission of the information be stayed while the extension is considered. PHMSA is further changing the proposed language to provide that, while the default response time is 30 days, an RSI may provide another response time. Thus, depending on the scope of the request, the RSI may provide a longer or, if reasonable, a shorter response time. Due to the time-sensitive nature of some investigations and the need for PHMSA to maintain the maximum information collection authority prescribed by statute, PHMSA declines to adopt a 15-day minimum response period. Finally, we believe it is unnecessary to adopt a process for contesting an RSI, but will consider any issues on a case-by-case basis.

8. Inspections and investigations—obstructing an investigation (§ 190.203).

In the NPRM, PHMSA proposed to amend § 190.203(e) to implement section 2 of the 2011 Act, which requires operators to afford all reasonable assistance in the investigation of an accident or incident and to make available all records and information

that pertain to the accident or incident. The proposed amendment further provides that any person obstructing such an investigation can be subject to civil penalties under § 190.223.

Comments: AOPL/API stated that the proposed amendment does not allow for circumstances where an operator may possess responsive documents that it is either legally barred from disclosing or may decline to provide on the basis that it includes proprietary or confidential information. AOPL/API therefore requested that PHMSA exclude any records and information legally protected or barred from disclosure by Federal or State law or court order.

Response: PHMSA routinely receives proprietary or confidential information from operators related to enforcement actions and is required to screen those documents before releasing them under the Freedom of Information Act. Through these existing controls, which include consultation with the operator before disclosure and an opportunity for the operator to object to disclosure, information that should not be publically disclosed can be protected. Accordingly, PHMSA is adopting the amendment as proposed.

9. Warnings (§ 190.205).

In the NPRM, PHMSA proposed to amend § 190.205 to clarify that an operator may respond to a warning letter. PHMSA also proposed to clarify that a warning may be issued for a probable violation of 33 U.S.C. 1321(j) or a PHMSA order or regulation issued thereunder.

Comments: AOPL/API requested modification of the proposal to permit operators to initiate hearings on warning items and to require that PHMSA address warning items in a final order if contested by a respondent. The comment reasoned that warning letters can

subject a respondent to further enforcement action or influence a civil penalty assessment and therefore, PHMSA should allow for increased due process.

Response: A warning letter or a warning item contained in a notice of probable violation is an allegation that OPS identified a potential issue, which if found in a future inspection, may subject the operator to future enforcement action. Warnings allow an operator to address a potential compliance issue before the next inspection to avoid a potential enforcement action. Warnings are complete upon issuance and PHMSA does not make subsequent findings as to whether the factual allegations in the warning were proven by evidence in the record. Accordingly, a warning by itself is never the basis for a civil penalty or compliance order in the proceeding in which the warning is brought.

An operator may respond to a warning if it chooses by providing additional information. If an operator submits objections to a warning item contained in a notice of probable violation, the final order issued in that case should note the respondent's comments. Again, PHMSA does not adjudicate the warning to determine if the allegations were proven. Accordingly, PHMSA believes it is not necessary to adopt a formal process for addressing warnings. PHMSA is amending the regulation to clarify that an operator may respond to a warning, but no adjudication is conducted on warning items.

10. Amendment of plans or procedures (§ 190.206, redesignated from § 190.237).

The NPRM proposed to redesignate the section governing amendment of plans or procedures from § 190.237 to § 190.206 for organizational purposes. PHMSA did not receive any comments and is adopting the amendment.

11. Notice of probable violation (§ 190.207).

PHMSA proposed several amendments to § 190.207, including amending § 190.207(a) to clarify that a notice of probable violation (NOPV) may be issued for a probable violation of 33 U.S.C. 1321(j) or a PHMSA order or regulation issued thereunder. PHMSA also proposed amending § 190.207(c) to clarify that a Regional Director may amend the notice of probable violation prior to issuance of a final order.

Comments: PHMSA did not receive any comments on the proposed amendments, but received a comment regarding documentation that should be included with an NOPV.

INGAA stated that when serving an NOPV, PHMSA should include the agency's "violation report." The violation report is an inspection report prepared by the Regional Director or inspector in each case to support the NOPV. It contains the evidence of the alleged violation and, if applicable, the identification of factors that influence the proposed civil penalty. Currently, operators may request the violation report at any time following receipt of an NOPV. INGAA encouraged PHMSA to automatically include the violation report when serving the NOPV to promote settlement, encourage early dispute resolution, and provide respondents with pertinent materials at the outset of an enforcement action.

Response: PHMSA has considered the comment by INGAA and continues to agree that respondents should have access to the violation report as early as practicable. PHMSA notes, however, that not all respondents request the violation report in each case. Violation reports can be voluminous, exceeding hundreds of pages particularly if there are copies of the operator's own procedures and records. To save the expense of unnecessarily duplicating and sending large volumes of documents in cases where a respondent would not otherwise request them, PHMSA is not adopting INGAA's suggestion to provide the

violation report automatically in every case. To ensure the violation report is made available to a respondent as soon as practicable, PHMSA is amending § 190.208 as set forth below to: (1) Clarify that respondents may request the violation report at any time following receipt of an NOPV; and (2) Require the Regional Director to provide the violation report to a respondent within five business days of receiving the request. PHMSA is also amending § 190.209 to reference the violation report as part of the case file that may be requested by the respondent.

12. Response options (§ 190.208, redesignated from § 190.209).

PHMSA proposed to amend the response options (formerly at § 190.209) to clarify the available options when responding to an NOPV. In summary, a respondent may choose not to contest an NOPV, to contest an NOPV in writing without requesting a hearing, or to request a hearing. The NPRM also proposed to correct a cross-reference in the regulation.

Comments: INGAA requested several changes to the regulation, including adding an option to respond in writing to compliance order cases where the respondent does not request a hearing, and an option for a respondent to request the execution of a consent order under § 190.219 when the NOPV proposes a civil penalty.

INGAA requested that a respondent have 30 days from receipt of the evidentiary material to submit its written response. Alternatively, INGAA requested that a respondent receive all evidentiary material within two business days of its request.

Response: For organizational purposes, PHMSA is redesignating this regulation as § 190.208. The rule clarifies that an operator may contest any NOPV in writing with or without requesting a hearing. As to INGAA's suggestion that PHMSA explicitly allow for

the execution of a consent order in civil penalty cases, PHMSA declines to adopt a formal regulation accepting offers of settlement in civil penalty cases for the reason stated below under § 190.219.

As to INGAA's request to amend the response period or require evidentiary material within two business days, PHMSA notes that such evidentiary material will be contained in the violation report, which the Regional Director will provide to a respondent within five business days of receiving a request. If a respondent in a particular case believes additional time is necessary to respond following receipt of the violation report, the respondent may submit a timely request in writing to the Regional Director explaining the reason for the extension request. Accordingly, PHMSA believe it is unnecessary to adopt the changes to the response deadline suggested by the commenter.

13. Case file (§ 190.209, new section).

The NPRM did not propose a new regulation to describe the case file in an enforcement proceeding, but multiple commenters requested certain documents be made part of the case file available to the respondent. In particular, INGAA commented that in order for PHMSA to prohibit ex parte communications and incorporate increased transparency into the decision making process, the regulations must explicitly recognize that the regional recommendation is part of the case file provided to the respondent. In addition, INGAA commented that respondents must be afforded time to review and respond to the recommendation.

AOPL/API commented that, to ensure due process and basic fairness in both the administrative process and upon judicial review, the respondent should be provided certain

case file materials that are not currently provided to the respondent, including (1) the evaluation and recommendation submitted by the Regional Director; (2) the recommended decision submitted by the Presiding Official or attorney from the OCC; and (3) the factual and analytical bases for civil penalties.

Response: PHMSA recognizes that the 2011 Act prohibits ex parte communications and that both the regulatory language and practices of the agency must conform. Restrictions on ex parte communications are discussed in greater detail under § 190.210.

In light of these comments, PHMSA is creating a new § 190.209 that describes the contents of the case file for each type of enforcement action, including cases involving a notice of amendment issued under § 190.206, NOPV issued under § 190.207, corrective action order issued under § 190.233, and safety order issued under § 190.239. PHMSA is adopting language that explicitly recognizes the region recommendation is part of the case file that is available to a respondent in all cases. As a result of this new section, PHMSA is deleting § 190.213(b), which previously described the contents of the file for cases involving an NOPV.

As to AOPL/API's recommendation that PHMSA provide the Presiding Official's recommended decision submitted to the Associate Administrator, PHMSA considers that document to be an internal and deliberative communication or "draft decision." Consequently, PHMSA is not amending the regulations to provide the recommended decision. As for the actual and analytical bases for civil penalties, PHMSA notes that the violation report, which may be requested in all cases, includes the identification of the assessment factors that influence the proposed civil penalty in a given case. By reviewing the violation report, a respondent will be able to apprehend and respond to those factors. In

addition, PHMSA currently provides, upon request, a general outline of how civil penalties are calculated.

14. Separation of functions (§ 190.210, new section).

To implement section 20 of the 2011 Act, PHMSA proposed a new § 190.210 that explains the separation of functions between enforcement personnel, who are involved in the investigation and prosecution of an enforcement case, and personnel who make (or assist in making) findings and determinations. The section also proposed to prohibit ex parte communications in enforcement cases.

Comments: PHMSA received multiple comments on this proposal. First, INGAA suggested that § 190.210(a) should delineate the Presiding Official's adjudicative role by specifically providing that, in cases where a hearing is held, the Presiding Official will not be engaged in any investigative or prosecutorial functions.

Second, INGAA commented that proposed § 190.210(b) did not fully extend the 2011 Act's ex parte provision to attorneys from the OCC who prepare recommended decisions in non-hearing cases. INGAA suggested a modification to § 190.210(b) that would explicitly reference attorneys who prepare such recommended decisions.

Third, INGAA commented that when rendering a decision in hearing cases, the Associate Administrator should consider only the NOPV, the operator's response, materials presented at a hearing, the hearing transcript, and the recommended decision. Any other communications or reports between decisional employees and non-decisional employees would impinge on basic due process principles. However, INGAA acknowledged that these

communications could be allowed in certain instances, particularly where respondents are afforded access and an opportunity to respond.

INGAA also suggested that PHMSA should revise the language of the ex parte prohibition proposed in § 190.210(b) to include remarks concerning a respondent's past conduct or credibility. INGAA proposed PHMSA change the proposed "information that is material to the question to be decided in the proceeding material" to "the facts, evidence, and legal arguments in the proceeding, the merits of the case, and the respondent's credibility and past conduct."

Lastly, AOPL/API requested that PHMSA emphasize in the regulations, including § 190.207(a), that Regional Directors do not serve in an advisory capacity for the agency.

Response: With regard to the first comment, § 190.210(a) is broad enough to encompass the role of the Presiding Official in hearing cases. In addition, the role of the Presiding Official is more fully addressed under § 190.212, which states that the Presiding Official may not be engaged in any prosecutorial or investigative functions under this subpart. Accordingly, PHMSA believes it is unnecessary to explicitly reference the Presiding Official in § 190.210(a).

In response to INGAA's second comment on ex parte communications, PHMSA is amending § 190.210(b) to reference attorneys from the OCC who prepare recommended decisions in non-hearing cases. Third, PHMSA is amending § 190.208 to include the Regional Director's recommendation as part of the case file that will be provided to respondents in all cases. This will increase transparency, avoid ex parte communications, and promote due process.

With regard to INGAA's final comment, PHMSA believes it is unnecessary to adopt the suggested definition of ex parte communications. The language proposed in the NPRM resembles the language in the 2011 Act and is broad enough to encompass any information that could potentially affect the decision, its evidentiary findings, legal rationale, penalty assessments or other determinations. Information concerning a respondent's past conduct, to the extent it resulted in prior violations, may influence a civil penalty, but that information must be contained in the violation report to have any bearing in the case.

Lastly, PHMSA believes the above changes satisfy the comments of AOPL/API. The Regional Director's recommendation does not constitute advice, but is merely a summary of his or her position on the case following receipt of the respondent's evidence and explanations. Such a statement of position, whether labeled a recommendation or otherwise, is consistent with the Region's enforcement and prosecutorial role. Operators will now receive the recommendation in all cases.

15. Hearing—exchange of evidentiary material and withdrawal (§ 190.211).

PHMSA proposed a number of amendments to § 190.211 to clarify the manner in which informal hearings are conducted. Among the changes, the NPRM proposed to amend: § 190.211(b) to state that 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; § 190.211(c) to provide that hearings in civil penalty cases under $25,000 will be held by telephone conference, unless either party requests an in-person hearing; § 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;

and § 190.211(e) to state that 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.

Comments: AOPL/API objected to the proposed language in § 190.211(b), which it stated appeared to authorize the Presiding Official to prevent a respondent from withdrawing a hearing request.

With regard to § 190.211(d) and (e), INGAA commented that the burden of producing evidentiary material was unfairly tilted toward OPS and should be adjusted to allow the respondent an opportunity to review and prepare a response to PHMSA's evidentiary material prior to a hearing. AOPL/API also objected to the proposed hearing submission timelines, allowing OPS to provide case files "to the extent practicable" but requiring the respondent to submit its materials 10 days before a hearing. AOPL/API suggested that OPS submit all evidentiary material, including the case file, within 30 days of a hearing. Under this scenario, in order that respondents can evaluate OPS's evidentiary material, the respondent's submission would be due 10 calendar days prior to a hearing. AGA commented that both parties should be required to submit records that they will rely on prior to a hearing to ensure a complete and efficient hearing.

The THLPSCC recommended approval of the NPRM if PHMSA made modifications consistent with the comments filed in response to the NPRM and principles of: transparency; completeness/increased formality; timeliness/regulatory certainty; and due process. The THLPSCC elaborated that "access and production of relevant information should apply equally to PHMSA staff and the respondent."

Response: To avoid confusion with regard to § 190.211(b), PHMSA is clarifying that a respondent may withdraw a hearing request and provide a written response.

With regard to § 190.211(d) and (e), PHMSA notes that a respondent will be able to request the evidentiary material in the case (i.e., the violation report) well in advance of a hearing under §§ 190.208 and 190.209. It is rare that a Region has any additional evidentiary material to provide prior to the hearing that is not already contained in the violation report. Accordingly, PHMSA believes it is unnecessary to adopt the suggestion to require OPS to submit its case file and evidentiary material 30 days in advance of a hearing. However, to further guarantee that access to, and production of, relevant information applies equally to both parties, PHMSA is amending § 190.211(d) to provide that both the respondent and OPS must submit all evidentiary material 10 days prior to a hearing unless the Presiding Official sets a different deadline or waives the deadline for good cause. Again, since the violation report is available to the respondent soon after receiving an NOPV, there will rarely be any additional evidentiary material to be provided by OPS. These changes should address the comments regarding fairness and equanimity.

16. Hearing—formality (§ 190.211).

As part of the clarification and reorganization of § 190.211, the NPRM proposed to redesignate § 190.211(d) as § 190.211(f) and to clarify that: the hearing is conducted informally; the Presiding Official regulates the course of the hearing and gives each party an opportunity to participate; and after the evidence has been presented, the Presiding Official may permit discussion on the issues under consideration.

Comments: AOPL/API commented that the seriousness of hearing cases and the need to compile a detailed and accurate record for potential judicial review should require a measure of formality for hearings.

INGAA proposed that PHMSA should include an option for operators to elect a formal hearing before an Administrative Law Judge (ALJ) "where warranted by the size and complexity of the case." INGAA acknowledged that, while the current hearing process works well for the majority of cases, ALJ hearings would advance due process in certain complex cases with large civil penalties by further separating the decision maker from those performing investigative duties and harmonizing pipeline enforcement with hazmat enforcement, which allows for ALJ hearings.

INGAA also requested that, alternatively, in large or complicated hearing cases, the parties be allowed to present oral arguments directly to the Associate Administrator during his or her review of a recommended decision, rather than having the Associate Administrator decide a case solely on the basis of the Presiding Official's recommendation.

Finally, AOPL/API commented that the proposed § 190.211(f) states that the Presiding Official "may" permit post-evidentiary discussion, in contrast to the original regulation that states post-evidentiary discussion must be permitted.

Response: PHMSA acknowledges that respondents have an interest in proceedings that reflect both the complexity of the case and the amount of the civil penalty or corrective action. Despite referring to pipeline enforcement hearings as "informal," the hearings actually follow a standard process and protocol that protects a respondent's rights. The process allows for complete written briefing of the issues both before and after the hearing, representation by counsel, production of evidence, testimony by witnesses, and cross-examination. Respondents may also make arrangements for their hearing to be transcribed for the case file. For these reasons, PHMSA believes it is unnecessary to adopt additional procedures to make the hearing process more formal.

With regard to the use of ALJ's specifically, PHMSA believes the existing process adequately addresses the due process concerns even in the most complex cases. Over the years, PHMSA has dealt successfully with complex cases involving large civil penalties and amassed considerable institutional knowledge in rendering decisions in these types of cases. By referring cases to an ALJ, the benefit of the informal nature of pipeline hearings would be undermined to the detriment of the timely resolution of pipeline safety cases. PHMSA declines to adopt INGAA's proposal and will continue to render all decisions in hearing cases as set forth in § 190.211.

As for INGAA's alternate proposal, under which the parties would be allowed to present an oral argument directly to the Associate Administrator, PHMSA believes the current process already develops a full and complete record that is used by the Presiding Official in reaching an independent recommended decision. The recommended decision summarizes and analyzes the respondent's arguments, and the Associate Administrator uses this recommended decision as the basis for issuing a final order. In PHMSA's view, adding additional oral arguments directly before the Associate Administrator would add little to the parties' previous submissions. PHMSA therefore declines to adopt this proposal.

With regard to § 190.211(f), in response to the comment PHMSA is revising the regulation to clarify that the Presiding Official will permit reasonable discussion of the issues.

17. Hearing—transcripts (§ 190.211).

In the proposed § 190.211(g), PHMSA sought to adopt into regulation the current practice of permitting respondents to arrange for a hearing to be recorded or transcribed at

their own cost. The paragraph also repeated language in the current regulation that PHMSA does not prepare a detailed record of a hearing.

Comments: AOPL/API commented that the statement in the regulation that PHMSA does not prepare a detailed record of the hearing is unnecessary and creates a concern regarding the quality of the record maintained by the agency for a potential judicial appeal.

Response: PHMSA is removing the statement at issue. The case file maintained by PHMSA in each enforcement proceeding is now specified in § 190.209. The rule also clarifies that a respondent must notify PHMSA in advance of its intent to transcribe the hearing. Finally, the rule clarifies that a respondent has the sole option of arranging for a court reporter to prepare a written transcript of a hearing.

18. Hearing—recommended decision (§ 190.211).

As part of the clarification and reorganization of § 190.211, the NPRM proposed to redesignate § 190.211(j) as § 190.211(i) and to clarify that the Presiding Official's recommended decision is forwarded to the Associate Administrator for issuance of a decision and order.

Comments: INGAA stated that this section should include a prohibition on sharing drafts between the Presiding Official and any Regional Director, PHMSA attorney, or other PHMSA personnel, except as needed for technical or engineering clarification. Furthermore, reflecting ex parte concerns, this provision should provide that non-decisional employees may not communicate, comment, or otherwise participate with the Presiding Official in drafting a recommended decision, which would violate the prohibition on private recommendations to the Presiding Official by the Regional Directors.

AOPL/API commented that this subsection should include a targeted timeline for the Presiding Official's recommended decision and proposed that the language be further amended to state that the decision will be issued within 30 calendar days of the hearing.

Response: PHMSA believes that the new § 190.210 addresses INGAA's comments and, therefore, it would be unnecessary to repeat those restrictions in § 190.211. Under the separation of functions outlined in § 190.210, PHMSA prohibits the Presiding Official's recommended decision to be viewed by, shared with, or otherwise commented on by Regional Directors, other PHMSA staff attorneys, or other PHMSA employees who are involved in the investigation or prosecution of the case.

PHMSA finds it would be impractical to adopt a 30-day target time for issuance of a decision following a hearing. The parties to a hearing are generally allotted time following the hearing to submit additional information. Until these materials are received, the record remains open. Also, hearing cases vary widely in complexity, which prevents establishment of a uniform deadline for the issuance of all recommended decisions. The internal workload of the agency also varies, according to fluctuating caseloads and other priorities. It is therefore impractical to establish a fixed date for the issuance of all hearing cases. Accordingly, PHMSA declines to adopt this proposal. Notwithstanding, PHMSA recognizes the importance of issuing cases in a timely manner and has internal processes to manage its caseload.

19. Presiding official, powers, and duties (§ 190.212, new section).

PHMSA proposed a new § 190.212 that would describe the function of the Presiding Official. Among other things, the proposed regulation explained that the Presiding Official

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. It also explained that 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.

Comments: INGAA and AOPL/API both commented that the proposal to permit a substitute presiding official should be consistent with the 2011 Act, which states that the Presiding Official may not be engaged in any investigative or prosecutorial functions. INGAA also stated that this section should allow for a respondent to request recusal of the Presiding Official.

Response: Based on the comments, PHMSA is revising § 190.212 to state that any substitute Presiding Official may not be engaged in any prosecutorial or investigative functions under 49 CFR Part 190. As to INGAA's proposal that PHMSA adopt a process for requesting recusal, PHMSA declines to adopt a formal process given that it will be rare to recuse the Presiding Official. The OCC will, however, deal with any potential recusals on a case-by-case basis.

20. Final order (§ 190.213).

The NPRM proposed several amendments to § 190.213. Among them, PHMSA proposed to amend § 190.213(b)(5) and to add § 190.213(b)(6) to clarify that the recommended decision prepared by the Presiding Official (in cases involving a hearing) or

the attorney from the OCC (in cases not involving a hearing) is forwarded to the Associate Administrator for issuance of a final order.

PHMSA also proposed to remove § 190.213(e), which stated that it is the Associate Administrator's policy to issue final orders expeditiously and to provide notice to respondents in cases where substantial delay is expected.

Comments: With regard to § 190.213(b), AOPL/API commented that the recommended decision submitted by the Presiding Official or attorney from the OCC should be made a part of the case file provided to the respondent.

With regard to § 190.213(e), INGAA commented that the rule should include a target timeline for the issuance of final orders in hearing cases, namely within 180 days of a hearing or closure of the record in a non-hearing case. AOPL/API also stated that PHMSA should adopt a specific timeline and proposed a 180-day target for issuance of a final order. The comments generally expressed concerns with PHMSA's lack of timely agency action and the attendant creation of regulatory uncertainty and potential hardship to individual operators, particularly where facilities have been removed from service.

Response: For the reasons stated under § 190.209, PHMSA declines to specify in the regulation that respondents will receive the recommended decision submitted to the Associate Administrator by the Presiding Official or attorney from the OCC. PHMSA is clarifying the amendment and adopting it at § 190.213(a).

With regard to establishing timelines for issuance of final orders, as explained above, PHMSA has established internal guidelines to ensure that enforcement orders are issued in a timely manner. PHMSA will continue this approach rather than establishing a fixed deadline in the regulations. In response to the comments, PHMSA is withdrawing the

proposal to delete the existing regulatory language that allows a respondent to request notice of the date by which action will be taken on an enforcement case whenever there has been a substantial delay. The provision is being redesignated as § 190.213(b).

21. Compliance orders generally (§ 190.217).

PHMSA proposed to amend § 190.217 to clarify that compliance orders may be issued for violations of 33 U.S.C. 1321(j) or any regulation or order issued thereunder by PHMSA. No comments were received in response to this proposal. Accordingly, PHMSA is adopting the amendment as proposed.

22. Consent order (§ 190.219).

PHMSA proposed to amend § 190.219 to provide that PHMSA and a respondent may execute a consent agreement for cases involving corrective action orders and safety orders, in addition to compliance orders. The NPRM also proposed to add § 190.219(c) to require notification when resolving a corrective action order in accordance with 49 U.S.C. 60112(c).

Comments: INGAA and AOPL/API requested that PHMSA further expand § 190.219 to permit the execution of consent orders in cases involving a civil penalty. INGAA also commented that the regulated community would benefit from additional guidance on PHMSA's settlement process and the issuance of relevant procedures.

Response: While PHMSA is not precluded from engaging in settlement to resolve any enforcement case, including those involving civil penalties, it is not the agency's practice to negotiate over civil penalty amounts. Therefore, PHMSA is not listing civil

penalty cases in § 190.219. With regard to settlement guidance, PHMSA is considering the request to develop such guidance.

23. Civil penalties generally (§ 190.221).

PHMSA proposed to amend § 190.221 to provide that PHMSA may assess civil penalties for violations of 33 U.S.C. 1321(j) or any regulation or order issued thereunder by PHMSA.

Comments: AOPL/API commented that PHMSA should clarify that penalties assessed under 33 U.S.C. 1321(j) are subject to the limits set forth in 33 U.S.C. 1321(b)(6) rather than the limits in 49 U.S.C. 60122.

With regard to civil penalties in general, INGAA stated that PHMSA should distribute the methodology it uses to calculate civil penalties. Through a policy statement, INGAA suggested that PHMSA could bring transparency to the process and improve respondent's understanding of the general process.

Response: PHMSA is amending § 190.223 by adding a new paragraph (b) that specifies the penalties assessed for violations of 33 U.S.C. 1321(j) are set forth in 33 U.S.C. 1321(b)(6), as adjusted by 40 CFR 19.4.

With regard to civil penalty methodology, PHMSA explains its penalty calculation process primarily through the violation report, which defines and then applies the statutory penalty assessment factors to the alleged facts of the case. Each final order also explains how the factors ultimately determined the assessed penalty. In addition, PHMSA currently provides, upon request, a general outline of how civil penalties are calculated.

24. Maximum penalties (§ 190.223).

PHMSA proposed to amend § 190.223(a) to clarify that the term "civil penalty" refers to "administrative" civil penalties, and to increase the maximum penalty from $100,000 to $200,000 for each violation, and the maximum penalty for a related series of violations from $1,000,000 to $2,000,000, in conformance with the 2011 Act. PHMSA also proposed to delete §§ 190.223(b), 190.223(c), and 190.229(b) to remove obsolete civil and criminal penalty provisions for violations involving offshore gathering lines.

Comments: AOPL/API and INGAA requested that PHMSA clarify that the new penalty maximums apply only to those violations that occur after January 3, 2012, the date of the 2011 Act enactment.

Response: PHMSA will apply the new maximums only for violations that occur after January 3, 2012. PHMSA is deleting §§ 190.223(b) and 190.229(b) as proposed, but is not deleting § 190.223(c) as that paragraph concerns LNG standards, not offshore gathering lines, and was unintentionally proposed to be removed.

25. Assessment considerations (§ 190.225).

PHMSA proposed to amend § 190.225(a) to remove paragraph (a)(4) relating to "ability to pay" as a penalty assessment factor to conform to the 2011 Act. PHMSA did not receive any comments on this proposal. Accordingly, the proposal is adopted.

26. Payment of penalty (§ 190.227).

PHMSA proposed to amend § 190.227(a) to allow penalties under $10,000 to be paid via https://www.pay.gov and to provide the correct address. No comments were received in response to this proposal. Accordingly, PHMSA is adopting the amendment.

27. Corrective action orders (§ 190.233).

The 2011 Act required PHMSA to promulgate regulations "ensuring expedited review" of any corrective action order (CAO), and defining "expedited review." In the NPRM, PHMSA proposed that a respondent may obtain expedited review, either through a written response or a request for a hearing under § 190.211 to be held "as soon as practicable." Section 190.233(b) proposed to define expedited review as the process for making a prompt determination on whether the order should remain in effect or be terminated. According to the proposed language, expedited review would be complete upon issuance of a determination of whether the order should remain in effect or be terminated.

PHMSA also proposed to amend the existing regulation to provide that any hearing under this section would be conducted by the Presiding Official in accordance with § 190.211. The NPRM proposed to remove language stating that the Presiding Official submits a recommendation to the Associate Administrator within 48 hours of the conclusion of a hearing to conform to actual practice. Instead, the NPRM proposed that the Presiding Official will submit a recommendation "expeditiously." Lastly, PHMSA proposed to amend § 190.211(f)(1) to clarify that a CAO must include a finding that a facility is or would be hazardous to life, property, or the environment.

Comments: INGAA commented that, commensurate with the need for prompt agency action concerning CAOs issued without notice, PHMSA should address three timing elements. Specifically, INGAA recommended the following specific changes: (1) retain the 48-hour requirement for the Presiding Official to present a recommendation to the Associate Administrator as to whether a hazardous condition exists requiring the expeditious issuance of a CAO; (2) establish a specific maximum period for the Associate Administrator to supersede, uphold, amend, or rescind a CAO issued under § 190.233(b); and (3) impose a "standard of promptness" on the termination of a CAO, especially in those circumstances where the CAO imposes a significant reduction to pipeline service. In addition, INGAA also requested that PHMSA state in § 190.233 that it will provide a copy of the case file and CAO data report, along with the CAO.

AOPL/API emphasized the potential for deleterious impacts to affected communities and operators from pipeline shutdowns and encouraged PHMSA to adopt clear timelines for setting hearing dates and rendering decisions on emergency CAOs. AOPL/API proposed that PHMSA modify § 190.233 to state that: (1) the agency will hold a hearing within 15 calendar days of issuing a CAO, unless the respondent either waives this right or requests a later hearing date; and (2) the agency will issue a decision within 15 calendar days following a hearing, unless it issues a "notice showing cause for an extension" and, after issuing such notice, renders a decision within 15 calendar days. AOPL/API questioned PHMSA's proposal to remove the 48-hour deadline for the Presiding Official to provide a recommendation to the Associate Administrator, arguing that the proposal runs counter to the 2011 Act's intent to require the issuance of expeditious decisions and industry's

preference for more definitive timelines. AOPL also commented that the proposed regulation did not address the circumstances in which a CAO may be amended.

AGA proposed that PHMSA modify § 190.233 to institute more definitive and quantitative timelines following issuance of an emergency CAO. Under AGA's proposal, unless the respondent requests a later date and demonstrates need, a hearing should be held within 15 days of issuing a CAO and a decision issued within 15 days of the hearing, unless the agency demonstrates a need for the extension and provides a later date for issuance of the order.

Response: PHMSA acknowledges the need to establish promptness in the issuance, administration, and hearing of CAOs, particularly when an order is issued without prior notice and opportunity for a hearing. Existing regulations for the issuance of a CAO without prior notice acknowledge the extraordinary nature of such an order by requiring that OPS must first make a determination that "failure to [issue an order] would result in the likelihood of serious harm to life, property, or the environment." This determination is generally only made when OPS finds after an accident or incident that a pipeline facility poses a risk of serious harm without immediate corrective action measures. Following issuance of such an order, the agency provides an operator with an opportunity for a prompt hearing and timely decision.

In PHMSA's experience, the circumstances of each case, including the need to coordinate with other Federal agencies and State officials and cooperation of the operator in providing information, may vary widely. The interplay of these factors influences the amount of time needed to schedule a hearing date and to issue a final determination. As some of these circumstances are outside of the agency's control, PHMSA believes it would

be imprudent to establish hard deadlines in the regulations. Notwithstanding, in response to the comments, PHMSA is adopting a target for hearings regarding CAOs issued without notice to be held within 15 days of receipt of the respondent's request, which is consistent with PHMSA's internal policy to hold CAO hearings and issue decisions in an expeditious manner. Likewise, PHMSA is adopting a target for the Presiding Official's post-hearing recommended decision to be submitted to the Associate Administrator within five business days of the hearing.

With regard to the comment concerning the case file and CAO data report, PHMSA is amending § 190.209 to clarify that a respondent may request these materials at any time. Although not previously referenced in Part 190, the CAO data report is a preliminary collection of facts usually compiled during an OPS investigation of an accident or incident, which assists the agency in deciding whether a CAO should be issued. The data report, if one is prepared, will be made available as part of the case file.

With regard to the comment concerning amendment of a CAO, PHMSA is adopting language in § 190.233(c)(5) to clarify that a CAO may be amended as a result of the expedited review. Finally, PHMSA is amending § 190.233(c)(2) to clarify that the response period for requesting a hearing runs from the respondent's receipt of the notice or order.

28. Safety orders (§ 190.239).

The NPRM proposed to amend § 190.239 to clarify that an operator may petition for reconsideration of a safety order. The amendment would also properly format the existing headings of each lettered paragraph in the regulation. PHMSA did not receive any comments on this proposal and is adopting the amendments.

29. Finality (§ 190.241, new section).

The NPRM proposed to delete § 190.213(d), which formerly defined final orders as final agency action except as provided by § 190.215. The intended effect of this and a related amendment to § 190.215 would have required operators to file a petition for reconsideration before seeking judicial review.

Comments: Generally, the commenters opposed this proposal and contended that the Administrative Procedure Act (5 U.S.C. 704) requires agency action to be considered final unless there is an opportunity for review that renders the action inoperable during the agency review.

INGAA stated that PHMSA should eliminate the mandatory petition process and restore petitions for reconsideration as an elective process. AOPL/API similarly stated that unless the entirety of an administrative order is stayed pending the agency's consideration of the petition for reconsideration, the proposed language violates the Administrative Procedure Act. AGA commented that, without staying the entirety of an order, PHMSA cannot establish the filing of a petition for reconsideration as a prerequisite to judicial review. AGA further stated that the proposed amendment places a "double burden" on operators in that it continues to enforce final agency orders while barring judicial review until the agency completes its review.

Response: Having considered the comments, PHMSA is withdrawing the proposed amendment. Petitions for reconsideration will remain an elective process. For organizational purposes, PHMSA is deleting § 190.213(d) pertaining to final orders, and is creating a new § 190.241 to address final agency action in all cases. Under § 190.241,

unless a petition for reconsideration is filed, final administrative action occurs upon issuance of an order directing amendment issued under § 190.206, a final order issued under § 190.213, a safety order issued under § 190.239, and a corrective action order issued under § 190.233.

30. Petitions for reconsideration (§ 190.243, redesignated from § 190.215).

The NPRM proposed to amend § 190.215, relating to petitions for reconsideration by redesignating the section and by expanding its scope to cover final orders, orders directing amendment, safety orders, and corrective action orders. It also proposed to allow 30, rather than 20, calendar days from service of an order to file a petition for reconsideration, and proposed to specify the filing period and standard of judicial review under 49 U.S.C. 60119. In addition, as mentioned above, the NPRM would have required that a respondent file a petition to exhaust its administrative remedies.

Comments: INGAA proposed that PHMSA adopt three amendments to the petition procedures, including: (1) that petitions will be reviewed by an individual other than the Associate Administrator and independent of his or her line of authority; (2) that the independent reviewer and the Associate Administrator be prohibited from communicating about the case, including references to the respondent's past conduct or the credibility of its witnesses; and (3) that the prohibition against repetitious arguments be eliminated. INGAA also argued that PHMSA should specifically state that petitions for reconsideration are deemed denied if not acted upon within 90 days.

AOPL/API commented that the proposed paragraphs (c) and (g) would conflict, as the former would prohibit a respondent from raising repetitious arguments in a petition for

reconsideration, and the latter would state that failure to raise an issue will deny the respondent the ability to raise that issue on appeal.

Response: For organizational purposes, PHMSA is redesignating this regulation at § 190.243. As noted above, PHMSA is withdrawing the proposal to require a petition for reconsideration be filed before seeking judicial review. PHMSA is also deleting language from the regulation that prohibits the Associate Administrator from considering repetitious information, arguments, or petitions. PHMSA is removing this language to clarify that the Associate Administrator will reconsider his or her original decision based on the information and arguments presented at the time the petition was filed. PHMSA is also amending the regulation to reflect that, when a petition is filed, the decision on the petition is the final administrative action.

PHMSA is also amending the proposed deadline for filing a petition for reconsideration. In light of the comments received regarding service under § 190.5, PHMSA is amending the regulation to require that any petition for reconsideration filed under § 190.243 be received within 20 days of the respondent's receipt of the order. This is an expansion of the existing regulation, which requires the petition to be filed 20 days from service of the order (i.e., when the order is mailed). PHMSA believes it is more equitable to base the deadline on when the order is received rather than when it was mailed, as suggested by the comments discussed under § 190.5.

With regard to the comment by INGAA that petitions should be reviewed by an individual other than the Associate Administrator, PHMSA continues to believe the current process is the most appropriate way to reconsider a decision. The Associate Administrator is the official most familiar with the original order and is in the best position to reconsider

his or her decision. Accordingly, PHMSA is not adopting the suggested change.

Likewise, PHMSA is not adopting the suggestion to deem all petitions denied if not decided within 90 days. While 90 days may be reasonable to decide many petitions for reconsideration, other cases may require more time to decide. It is the policy of PHMSA to issue decisions on reconsideration expeditiously, and PHMSA believes it is in everyone's interest to have a reasoned decision rather than an automatic denial.

Finally, PHMSA has reconsidered and is withdrawing the proposal to include corrective action orders as an agency action that can be petitioned for reconsideration. Due to the fact that corrective action must be taken by the respondent as soon as the order is issued to address the hazardous condition, most immediate actions will have already been completed by the time any petition for reconsideration is filed and decided. Moreover, operators may already seek review of a corrective action order issued without notice, after which PHMSA will issue a decision confirming, amending, or terminating the order. A petition for reconsideration of the order would only duplicate the review already available under § 190.233.

Subpart C—Criminal Enforcement (new Subpart)

31. Criminal penalties generally (§ 190.291, redesignated from § 190.229).

PHMSA proposed to redesignate Subpart C—Procedures for Adoption of Rules as Subpart D and to create a new Subpart C—Criminal Enforcement. Existing provisions in Subpart B at §§ 190.229 and 190.231 were proposed to be redesignated to the new Subpart C at §§ 190.291 and 190.293, respectively. No comments were received in response to this proposal. Accordingly, PHMSA is implementing the redesignation as proposed.

32. Referral for prosecution (§ 190.293, redesignated from § 190.231).

In addition to redesignating § 190.231 as § 190.293, PHMSA is also amending § 190.293 to clarify that if a PHMSA employee becomes aware of any actual or possible activity subject to criminal penalties under § 190.291, the employee reports it to the OCC and to his or her supervisor. The Chief Counsel may refer the report to OPS for investigation. If appropriate, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

Subpart D—Procedures for Adoption of Rules (redesignated from Subpart C)

33. Petitions for extension of time to comment (§ 190.319).

The NPRM proposed to redesignate Subpart C—Procedures for Adoption of Rules as a new Subpart D and to amend § 190.319 to clarify that petitions for extensions of time to file comments on a rulemaking must be addressed to PHMSA, as provided in § 190.309. PHMSA did not receive any comments to this proposal. Accordingly, PHMSA is adopting the proposed changes.

34. Contents of written comments (§ 190.321).

The NPRM proposed to remove the requirement in § 190.321 to submit multiple copies of a rulemaking comment. PHMSA did not receive any comments to this proposal and is adopting the proposed change.

35. Hearings (§ 190.327).

The NPRM proposed to delete the phrase "under this part" in § 190.327(b) and insert "under this subpart" to clarify that procedures for a hearing held on a notice of proposed rulemaking do not apply to other types of hearings in Part 190, such as enforcement hearings. PHMSA did not receive any comments on this proposal and is implementing this change as proposed.

36. Petitions for reconsideration (§ 190.335).

The NPRM proposed to amend § 190.335(a) to remove the requirement to submit multiple copies of a petition for reconsideration of a regulation. PHMSA did not receive any comments on this proposal and is adopting the amendment.

37. Proceedings on petitions for reconsideration (§ 190.337).

PHMSA proposed to make certain editorial changes to § 190.337(a) and to remove § 190.337(b), the latter of which stated that the Associate Administrator or Chief Counsel issues a notice of action taken on a petition for reconsideration of a regulation within 90 days of the date the regulation is published in the Federal Register.

Comments: INGAA stated that PHMSA should retain the 90-day requirement and "elevate it to a regulatory requirement."

Response: In response to the comment, PHMSA is withdrawing the proposal to amend § 190.337. PHMSA believes it is unnecessary at this time to change the policy to take action on a petition for reconsideration within 90 days, unless it is impracticable.

38. Appeals (§ 190.338).

The NPRM proposed to delete § 190.338(c) and thereby remove the requirement to submit multiple copies of an appeal of a denial issued under §§ 190.333 or 190.337. PHMSA did not receive any comments on this proposal and is adopting the amendment.

39. Special permits (§ 190.341).

The NPRM proposed to amend § 190.341 to clarify that PHMSA may issue an NOPV for a violation of a special permit. The amendment would also properly format the headings at the beginning of each lettered paragraph. PHMSA did not receive any comments on this proposal and is adopting the amendments.

Amendments to Parts 192-199

40. General provisions (§ 192.603).

The NPRM proposed to amend § 192.603(c) by replacing the reference to § 190.237 related to notices of amendment with § 190.206 to reflect the redesignation of that regulation. PHMSA did not receive any comments and is adopting the amendment.

41. Plans and procedures (§ 193.2017).

The NPRM proposed to amend § 193.2017(b) by replacing the reference to § 190.237 related to notices of amendment with § 190.206 to reflect the redesignation of that regulation. PHMSA did not receive any comments and is adopting the amendment.

42. Procedural manual for operations, maintenance, and emergencies (§ 195.402).

The NPRM proposed to amend § 195.402(b) by replacing the reference to § 190.237 related to notices of amendment with § 190.206 to reflect the redesignation of that regulation. PHMSA did not receive any comments and is adopting the amendment.

43. Anti-drug plan (§ 199.101).

The NPRM proposed to amend § 199.101(b) by replacing the reference to § 190.237 related to notices of amendment with § 190.206 to reflect the redesignation of that regulation. PHMSA did not receive any comments and is adopting the amendment.

Regulatory Analyses and Notices

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

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

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." PHMSA amended miscellaneous provisions to conform to actual agency practice, make certain corrections to various provisions, and implement mandates from the 2011 Act.

PHMSA anticipates the amendments contained in this rule will have no economic impact on the regulated community.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities.

Description of the reasons that action by PHMSA was taken. The 2011 Act required PHMSA to issue regulations implementing certain statutory mandates involving the Presiding Official, the agency's enforcement practices and procedures, and various other provisions. PHMSA proposed various corrections in order to resolve inconsistencies and errors throughout Part 190.

Succinct statement of the objectives of, and legal basis for, the rule. Under the pipeline safety laws, 49 U.S.C. 60101 et seq., the Secretary of Transportation must prescribe minimum safety standards for pipeline transportation and for pipeline facilities. The Secretary has delegated this authority to the PHMSA Administrator. The rule would implement statutory mandates and make certain other amendments and corrections that improve the agency's administrative enforcement procedures.

Description of small entities to which the rule will apply. In general, the rule will apply to pipeline operators, some of which may qualify as a small business as defined in section 601(3) of the Regulatory Flexibility Act. Some pipelines are operated by jurisdictions with a population of less than 50,000 people, and thus qualify as small governmental jurisdictions.

Description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the rule, and the type of professional skills necessary for preparation of the report or record. The rule does not impose any new reporting or recordkeeping requirement. However, it affects the timing of certain submissions that must be submitted under the existing regulations. For example, the rule requires operators to respond to an RSI within 30 days. Prior to this, the regulation required operators to respond within 45 days of receiving such a request. Because operators must currently respond to RSIs, the rule does not impose any additional reporting requirements.

Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the rule. PHMSA is unaware of any duplicative, overlapping, or conflicting Federal rules.

Description of any significant alternatives to the rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the rule on small entities, including alternatives considered. PHMSA is unaware of any alternatives that would implement the required statutory mandates and other necessary regulatory amendments. Since the rule only implicates PHMSA's administrative enforcement processes, and is specifically designed to eliminate inconsistencies for regulated entities, no alternatives would result in smaller economic impacts on small entities while at the same time meeting the objectives of the 2011 Act and the agency's need for a consistent and efficient administrative enforcement process.

Executive Order 13175

PHMSA has analyzed this rule according to the principles and criteria in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Because this rule does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

This rule imposes no new requirements for recordkeeping and reporting.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million, adjusted for inflation, or more in any one year 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.

National Environmental Policy Act

The National Environmental Policy Act (42 U.S.C. 4321 – 4375) requires that Federal agencies analyze final actions to determine whether those actions will have a significant impact on the human environment. The Council on Environmental Quality regulations requires Federal agencies to conduct an environmental review considering (1) the need for the final action; (2) alternatives to the final action; (3) probable environmental impacts of the final action and alternatives; and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

1. Purpose and Need. PHMSA is making non-substantive amendments and editorial changes to the pipeline safety regulations. These include:

- Increasing the maximum penalties for violations to $200,000 per violation per day of violation with a maximum of $2,000,000 for a related series of violations;
- Amending the existing definition of "presiding official" and adding a new section concerning the presiding official's powers and duties;
- Permitting a respondent to arrange for a hearing to be transcribed at their cost and requiring them to submit a copy of the transcript;
- Implementing a separation of functions between employees involved with the investigation and prosecution of an enforcement case and those involved in deciding the case;
- Prohibiting ex-parte communications during the formal hearing process;
- Defining the term "expedited review" for reviewing CAOs; and
- Making other technical corrections and updates to address miscellaneous errors and omissions.

2. Alternatives. In developing the rule, PHMSA considered two alternatives:

- Alternative 1: Implement statutory mandates. PHMSA has an unqualified obligation to implement the statutory mandates of the 2011 Act. The changes in this rule serve that purpose by amending the pipeline safety regulations in accordance with the 2011 Act.
- Alternative 2: Revise the pipeline safety regulations to incorporate the statutory mandates, other amendments and minor editorial changes previously discussed. PHMSA made certain amendments, corrections and editorial changes to the

pipeline safety regulations. These revisions would eliminate inconsistencies and conform to the agency's existing practices.

3. Analysis of Environmental Impacts. We did not receive any comments to the proposed finding in the NPRM that the proposed non-substantive changes would have little or no impact on the human environment. The final amendments are not substantive in nature and would have little or no impact on the human environment.

PHMSA has concluded that neither of the alternatives discussed above would result in any significant impacts on the environment.

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement published in the Federal Register on April 11, 2000 (70 FR 19477), or visit http://dms.dot.gov.

Executive Order 13132

PHMSA has analyzed this rule according to Executive Order 13132 ("Federalism"). The rule does not have a substantial direct effect 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. This rule does not impose substantial direct compliance costs on state and local governments. This rule does not preempt state law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

This rule is not a "significant energy action" under Executive Order 13211 ("Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use"). It is not likely to have a significant adverse effect on supply, distribution, or energy use. Further, the Office of Information and Regulatory Affairs has not designated this rule as a significant energy action.

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, Petroleum, Pipeline safety, Reporting and record-keeping requirements.

49 CFR Part 199

Alcohol abuse, Drug testing.

For the reasons set forth in the preamble, PHMSA amends 49 CFR chapter I, subchapter D as follows:

PART 190 – PIPELINE SAFETY ENFORCEMENT AND REGULATORY 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 1.96.

2. The heading of Part 190 is revised to read as set forth above.

PART 190 – [AMENDED]

3. In Part 190, revise all references to “Administrator, PHMSA” to read “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 “49 U.S.C. 5101 et seq. (the hazardous material transportation laws)” and adding in its place “33 U.S.C. 1321 (the water pollution control laws)”.

7. In § 190.3, the definitions of “Presiding Official” and “Respondent” are revised and 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, or his or her delegate.

Chief Counsel means the Chief Counsel of PHMSA.

Day means a 24-hour period ending at 11:59 p.m. Unless otherwise specified, a day refers to a calendar day.

* * * * *

Operator means any owner or operator.

* * * * *

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

* * * * *

Respondent means a person upon whom OPS has served an enforcement action described in this part.

* * * * *

8. In § 190.5, paragraphs (a) and (c) are revised to read as follows:

§ 190.5 Service.

(a) Each order, notice, or other document required to be served under this part will be served personally, by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt.

* * * * *

(c) Service by certified mail or overnight courier is complete upon mailing. Service by electronic transmission is complete upon transmission and acknowledgement of receipt. An official receipt for the mailing from the U.S. Postal Service or overnight courier, or a facsimile or other electronic transmission confirmation, constitutes prima facie evidence of service.

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

§ 190.7 Subpoenas; witness fees.

(a) The Administrator, Chief Counsel, or the official designated by the Administrator to preside over a hearing convened in accordance with this part, may sign and issue subpoenas individually on his or her own initiative at any time, including pursuant to 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.

* * * * *

(c) A subpoena may be served personally by any person who is not an interested person and is not less than 18 years of age, or by certified mail.

(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. 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, by mailing them by certified mail to the person at the last known address, or by any method whereby actual notice is given to the person and the fees are made available prior to the return date.

(e) When the person to be served is not a natural person, delivery of a copy of the subpoena and tender of the fees may be achieved by handing them to a designated agent or representative for service, or to any officer, director, or agent in charge of any office of the person, or by mailing them by certified mail to that agent or representative and the fees are made available prior to the return date.

* * * * *

10. Section 190.11 is 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 website 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 website 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 website. The telephone number for the

OPS information line is (202) 366–4595 and the OPS website 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.

11. 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., 33 U.S.C. 1321(j), and any regulation or order issued thereunder. It also prescribes the procedures governing the exercise of that authority and the imposition of those sanctions.

* * * * *

12. 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.

(c) If the Associate Administrator or Regional Director believes that further information is needed to determine appropriate action, the Associate Administrator or Regional Director may notify the pipeline operator in writing that the operator is required to provide specific information within 30 days from the time the notification is received by the operator, unless otherwise specified in the notification. The notification must provide a reasonable description of the specific information required. An operator may request an extension of time to respond by providing a written justification as to why such an extension is necessary and proposing an alternative submission date. A request for an extension may ask for the deadline to be stayed while the extension is considered. General statements of hardship are not acceptable bases for requesting an extension.

* * * * *

(e) If a representative of the U.S. Department of Transportation inspects or investigates an accident or incident involving a pipeline facility, the operator must make available to the representative all records and information that pertain to the event 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.

13. Section 190.205 is revised to read as follows:

§ 190.205 Warnings.

Upon determining that a probable violation of 49 U.S.C. 60101 et seq., 33 U.S.C. 1321(j), or any regulation or order issued thereunder has occurred, the Associate Administrator or a Regional Director may issue a written warning notifying the operator of the probable violation and advising the operator to correct it or be subject to potential enforcement action in the future. The operator may submit a response to a warning, but is not required to. An adjudication under this subpart to determine whether a violation occurred is not conducted for warnings.

14. 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, 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 revisions of the plans or procedures and provide an opportunity to respond. The notice will allow the operator 30 days following receipt of the notice to submit written comments, revised procedures, or a request for a hearing under § 190.211.

(b) 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. The Associate Administrator issues an order directing amendment of the plans or procedures 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 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.

(c) An order directing amendment of an operator’s plans or procedures prescribed in this section may be in addition to, or in conjunction with, other appropriate enforcement actions prescribed in this subpart.

15. In § 190.207, revise paragraphs (a), (b)(2), and (c) 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 charging that person with a probable violation of 49 U.S.C. 60101 et seq., 33 U.S.C. 1321(j), or any regulation or order issued thereunder.

(b) * * *

(2) Notice of response options available to the respondent under § 190.208;

* * * * *

(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 § 190.208.

16. Add § 190.208 to Subpart B to read as follows:

§ 190.208 Response options.

Within 30 days of receipt of a notice of probable violation, the respondent must answer the Regional Director who issued the notice in the following manner:

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

(1) If the 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 the Associate Administrator to make a finding of violation and to issue a final order under § 190.213;

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

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

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

(b) When the notice contains a proposed compliance order—

(1) If the respondent is not contesting an allegation of probable violation, agree to the proposed compliance order. This authorizes the Associate Administrator to make a finding of violation and to issue a final order under § 190.213;

(2) Request the execution of a consent order under § 190.219;

(3) If the respondent is contesting one or more of the allegations of probable violation or compliance terms, but is not requesting a hearing under § 190.211, the respondent may object to the proposed compliance order and submit written explanations, information, or other materials in answer to the allegations in the notice of probable violation; or

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

(c) Before or after responding in accordance with paragraph (a) of this section or, when applicable paragraph (b) of this section, the respondent may request a copy of the violation report from the Regional Director as set forth in § 190.209. The Regional Director will provide the violation report to the respondent within five business days of receiving a request.

(d) Failure 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.

(e) All materials submitted by operators in response to enforcement actions may be placed on publicly accessible Web sites. A respondent seeking confidential treatment under 5 U.S.C. 552(b) for any portion of its responsive materials must provide a second copy of such materials along with the complete original document. A respondent may redact the portions it believes qualify for confidential treatment in the second copy but must provide a written explanation for each redaction.

17. Section 190.209 is revised to read as follows:

§ 190.209 Case file.

(a) The case file, as defined in this section, is available to the respondent in all enforcement proceedings conducted under this subpart.

(b) The case file of an enforcement proceeding consists of the following:

(1) In cases commenced under § 190.206, the notice of amendment and the relevant procedures;

(2) In cases commenced under § 190.207, the notice of probable violation and the violation report;

(3) In cases commenced under § 190.233, the corrective action order or notice of proposed corrective action order and the data report, if one is prepared;

(4) In cases commenced under § 190.239, the notice of proposed safety order;

(5) Any documents and other material submitted by the respondent in response to the enforcement action;

(6) In cases involving a hearing, any material submitted during and after the hearing as set forth in § 190.211; and

(7) The Regional Director's written evaluation of response material submitted by the respondent and recommendation for final action, if one is prepared.

18. 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 the 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, Presiding Official, or attorney drafting the recommended decision concerning information that is relevant to the questions to be decided in the proceeding. A party may communicate with the Presiding Official regarding administrative or procedural issues, such as for scheduling a hearing.

19. Section 190.211 is revised to read as follows:

§ 190.211 Hearing.

(a) General. This section applies to hearings conducted under this part relating to civil penalty assessments, compliance orders, orders directing amendment, safety orders, and corrective action orders. The Presiding Official will convene hearings conducted under this section.

(b) Hearing request and statement of issues. A request for a hearing 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. The respondent may withdraw a request for a hearing in writing and provide a written response.

(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 OPS Region. Hearings may be held by video teleconference if the necessary equipment is available to all parties.

(d) Pre-hearing submissions. If OPS or the respondent intends to introduce material, including records, documents, and other exhibits not already in the case file, the material must be submitted to the Presiding Official and the other party at least 10 days prior to the date of the hearing, unless the Presiding Official sets a different deadline or waives the deadline for good cause.

(e) 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, explanations, documents, testimony or other evidence that is 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 will permit reasonable discussion of the issues under consideration.

(f) Written transcripts. If a respondent elects to transcribe a hearing, the respondent must make arrangements with a court reporter at cost to the respondent and submit a complete copy of the transcript for the case file. The respondent must notify the Presiding Official in advance if it intends to transcribe a hearing.

(g) 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.

(h) Preparation of decision. After consideration of the case file, the Presiding Official prepares a recommended decision in the case, which is then forwarded to the Associate Administrator for issuance of a final order.

20. 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 notices 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 who is not engaged in any investigative or prosecutorial functions under this subpart.

(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;

(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) Set the date for filing documents, briefs, and other items;

(6) Prepare a recommended decision; and

(7) Exercise the authority necessary to carry out the responsibilities of the Presiding Official under this subpart.

21. Section 190.213 is revised to read as follows:

§ 190.213 Final order.

(a) In an enforcement proceeding commenced under § 190.207, an attorney from the Office of Chief Counsel prepares a recommended decision after expiration of the 30-day response period prescribed in § 190.208. If a hearing is held, the Presiding Official prepares the recommended decision as set forth in § 190.211. The recommended decision is forwarded to the Associate Administrator who considers the case file and issues a final order. The final order includes—

(1) A statement of findings and determinations on all material issues, including a determination as to whether each alleged violation has been proved;

(2) If a civil penalty is assessed, the amount of the penalty and the procedures for payment of the penalty, provided that the assessed civil penalty may not exceed the penalty proposed in the notice of probable violation; and

(3) If a compliance order is issued, a statement of the actions required to be taken by the respondent and the time by which such actions must be accomplished.

(b) In cases where a substantial delay is expected in the issuance of a final order, 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.

§ 190.215 [Removed and Reserved]

22. Remove and reserve § 190.215.

23. Section 190.217 is revised to read as follows:

§ 190.217 Compliance orders generally.

When a Regional Director has reason to believe that a person is engaging in conduct that violates 49 U.S.C. 60101 et seq., 33 U.S.C. 1321(j), or any regulation or order issued thereunder, and if the nature of the violation and the public interest so warrant, the Regional Director may initiate proceedings under §§ 190.207 through 190.213 to determine the nature and extent of the violations and for the issuance of an order directing compliance.

24. 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 Regional Director and the respondent may agree to resolve the case by execution of a consent agreement and order, which may be jointly executed by the parties and issued by the Associate Administrator. Upon execution, the consent order is considered a final order under § 190.213.

* * * * *

(c) Prior to the execution of a consent agreement and order arising out of a corrective action order under § 190.233, the Associate Administrator will notify any appropriate State official in accordance with 49 U.S.C. 60112(c).

25. Section 190.221 is revised to read as follows:

§ 190.221 Civil penalties generally.

When a Regional Director has reason to believe that a person has committed an act violating 49 U.S.C. 60101 et seq., 33 U.S.C. 1321(j), or any regulation or order issued thereunder, the Regional Director may initiate proceedings under §§ 190.207 through 190.213 to determine the nature and extent of the violations and appropriate civil penalty.

26. 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., or any regulation or order issued thereunder 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 a provision of 33 U.S.C. 1321(j) or any regulation or order issued thereunder is subject to an administrative civil penalty under 33 U.S.C. 1321(b)(6), as adjusted by 40 CFR 19.4.

(c) Any person who is determined to have violated any standard or order under 49 U.S.C. 60103 is subject to an administrative civil penalty not to exceed $50,000, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

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

this section.

(e) Separate penalties for violating a regulation prescribed under this subchapter and for violating an order issued under §§ 190.206, 190.213, 190.233, or 190.239 may not be imposed under this section if both violations are based on the same act.

27. Section 190.225 is revised to read as follows:

§ 190.225 Assessment considerations.

In determining the amount of a civil penalty under this part,

(a) The Associate Administrator will 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

(b) The Associate Administrator may consider:

(1) The economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages; and

(2) Such other matters as justice may require.

28. 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, or by wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury, or via https://www.pay.gov. Payments exceeding $10,000 must be made by wire transfer.

* * * * *

29. In Subpart B, remove the undesignated center heading "Criminal Penalties".

§ 190.229 [Removed and Reserved]

30. Remove and reserve § 190.229.

§ 190.231 [Removed and Reserved]

31. Remove and reserve § 190.231.

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

§ 190.233 Corrective action orders.

(a) Generally. 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, 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 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) Waiver of notice and expedited review. 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 contests the order may obtain expedited review of the order either by answering in writing to the order within 10 days of receipt or requesting a hearing under § 190.211 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 amended or terminated. The expedited review of an order issued under this paragraph will be complete upon issuance of such determination.

(c) Notice and hearing:

(1) Written notice that OPS intends to issue an order under this section will be served upon the owner or operator of an alleged hazardous facility in accordance with § 190.5. The notice must allege the existence of a hazardous facility and state the facts and circumstances

supporting the issuance of a corrective action order. The notice must provide the owner or operator with an opportunity to respond within 10 days of receipt.

(2) An owner or operator that elects to exercise its opportunity for a hearing under this section must notify the Associate Administrator of that election in writing within 10 days of receipt of the notice provided under paragraph (c)(1) of this section, or the order under paragraph (b) of this section when applicable. The absence of such written notification waives an owner or operator's opportunity for a hearing.

(3) At any time after issuance of a notice or order under this section, the respondent may request a copy of the case file as set forth in § 190.209.

(4) A hearing under this section is conducted pursuant to § 190.211. The hearing should be held within 15 days of receipt of the respondent’s request for a hearing.

(5) After conclusion of a hearing under this section, the Presiding Official submits a recommended decision to the Associate Administrator as to whether or not the facility is or would be hazardous to life, property, or the environment, and if necessary, requiring expeditious corrective action. If a notice or order is contested in writing without a hearing, an attorney from the Office of Chief Counsel prepares the recommended decision. The recommended decision should be submitted to the Associate Administrator within five business days after conclusion of the hearing or after receipt of the respondent’s written objection if no hearing is held. 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 issues a corrective action order in accordance with this section, or confirms (or amends) the corrective action order 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 withdraws the notice or terminates the order issued under paragraph (b) of this section, and promptly notifies the 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]

33. Remove and reserve § 190.237.

34. Section 190.239 is amended by revising the headings 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 § 190.243.

35. Add § 190.241 to Subpart B to read as follows.

§ 190.241 Finality.

Except as otherwise provided by § 190.243, an order directing amendment issued under § 190.206, a final order issued under § 190.213, a corrective action order issued under § 190.233, or a safety order issued under § 190.239 is considered final administrative action on that enforcement proceeding.

36. Add § 190.243 to Subpart B to read as follows.

§ 190.243 Petitions for reconsideration.

(a) A respondent may petition the Associate Administrator for reconsideration of an order directing amendment of plans or procedures issued under § 190.206, a final order issued under § 190.213, or a safety order issued under § 190.239. The written petition must

be received no later than 20 days after receipt of the order by the respondent. A copy of the petition must be provided to the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration, East Building, 2nd Floor, Mail Stop E26-105, 1200 New Jersey Ave. SE, Washington, D.C. 20590 or by email to phmsachiefcounsel@dot.gov. 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 why they were not presented prior to issuance of the final order.

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

(d) The Associate Administrator may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. If the Associate Administrator reconsiders an order under this section, 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.

(e) It is the policy of the Associate Administrator to expeditiously issue notice of the action taken on a petition for reconsideration. 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.

(f) If the Associate Administrator reconsiders an order under this section, the decision on reconsideration is the final administrative action on that enforcement proceeding.

(g) 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).

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

SUBPART C [REDESIGNATED AS SUBPART D]

37. Redesignate 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, United States Code, 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, United States Code, 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, United States Code, 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, United States Code, 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 a PHMSA employee becomes aware of any actual or possible activity subject to criminal penalties under § 190.291, the employee reports it to the Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, and to his or her supervisor. The Chief Counsel may refer the report to OPS for investigation. 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 must 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 subpart 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.

* * * * *

§ 190.338 [Amended]

43. In § 190.338, paragraph (c) is removed and paragraph (d) is redesignated as paragraph (c).

44. 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 probable 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

45. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 60102, 60104, 60108, 60109, 60110, 60113, 60116, 60118, and 60137; and 49 CFR 1.53.

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

§ 192.603 General provisions.

* * * * *

(c) The Associate 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

47. The authority citation for Part 193 continues to read as follows:

Authority: 49 U.S.C. 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

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

§ 193.2017 Plans and procedures.

* * * * *

(b) The Associate 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

49. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 60102, 60104, 60108, 60109, 60116, 60118, and 60137; and 49 CFR 1.53.

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

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

* * * * *

(b) The Associate 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 – DRUG AND ALCOHOL TESTING

51. The authority citation for Part 199 continues to read as follows:

Authority: 49 U.S.C. 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

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

§ 199.101 Anti-drug plan.

* * * * *

(b) The Associate 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.

Issued in Washington, DC on September 18, 2013, under authority delegated in 49 CFR Part 1.97(a).

Cynthia L. Quarterman,

Administrator.

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