



DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 190

[Docket No. PHMSA-2025-0135; Amdt. No. 190-22]

RIN 2137-AF81

Pipeline Safety: Rationalize Special Permit Conditions

ACTION: Notice of proposed rulemaking.

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

SUMMARY: PHMSA is proposing to clarify that the conditions in a special permit must relate directly and substantially to the requirement in the Federal Pipeline Safety Regulations that an applicant is seeking to waive.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments identified by the Docket Number PHMSA-2025-0135 using any of the following methods:

E-Gov Web: <https://www.regulations.gov>. This site allows the public to enter comments on any Federal Register notice issued by any agency. Follow the online instructions for submitting comments.

Mail: Docket Management System: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, D.C. 20590-0001.

Hand Delivery: U.S. DOT Docket Management System: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: 1-202-493-2251.

For commenting instructions and additional information about commenting, see
SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Saylor Palabrica, Transportation Specialist,
1200 New Jersey Avenue, SE Washington, D.C. 20590, 202-744-0825,
saylor.palabrica@dot.gov.

SUPPLEMENTARY INFORMATION:

I. GENERAL DISCUSSION:

Congress has authorized PHMSA to issue an order to the owner or operator of a pipeline facility waiving compliance with any standard prescribed in the Federal Pipeline Safety Regulations “on terms [PHMSA] considers appropriate if [PHMSA] determines that the waiver is not inconsistent with pipeline safety.” 49 U.S.C. 60118(c)(1)(A), (c)(2)(A). PHMSA can issue these waivers either on an emergency basis, provided certain conditions are met, or a non-emergency basis. 49 U.S.C. 60118(c)(1) and (2). If a waiver is granted, PHMSA must state the reasons in the order for providing that relief. 49 U.S.C. 60118(c)(3).

Congress has also authorized state authorities with a certification or agreement with PHMSA to issue orders to owners or operators of intrastate pipeline facilities “waiv[ing] compliance with a safety standard to which the certification or agreement applies in the same way and to the same extent” as PHMSA. 49 U.S.C. 60118(d). To issue such a waiver, the state authority “must give [PHMSA] written notice . . . at least 60 days before its effective date.” 49 U.S.C. 60118(d). “If [PHMSA] makes a written objection before the effective date of the waiver, the waiver is stayed” until PHMSA makes a final decision. 49 U.S.C. 60118(d).

PHMSA refers to these congressionally authorized waivers as “special permits” and has codified procedures for the issuance of the same in 49 CFR 190.341. The procedures address, among other things, the information that must be contained in a special permit application; the process that PHMSA follows in deciding whether to grant, deny, or renew a special permit; and

the circumstances where PHMSA may seek to revoke, suspend, or modify a special permit. 49 CFR 190.341. In addition, the procedures generally state that if a special permit is granted, “[c]onditions may be imposed . . . if [PHMSA] concludes they are necessary to assure safety, environmental protection, or are otherwise in the public interest.” 49 CFR 190.341(d)(2).

Experience has shown that the current language in the special permit procedures provides too much discretion to PHMSA in determining the conditions that should be included in granting a waiver. PHMSA has in the past often imposed conditions that are not directly, or even substantially, related to the requirement in the Federal Pipeline Safety Regulations that the applicant asked to be waived. As a result of that historical practice, owners and operators of pipeline facilities are unable to predict what types of conditions will be accepted by or imposed by PHMSA in granting a special permit. These uncertain and inconsistent outcomes also discourage owners and operators from applying for special permits or from proposing conditions to address directly potential risks in their applications.

PHMSA’s historical practice has impeded the agency’s ability to modernize the Federal Pipeline Safety Regulations to accommodate innovative technologies and practices as well. Special permits can serve as a proving ground for evaluating such technologies and practices for potential adoption by regulation under PHMSA’s continuing oversight.

Multiple external stakeholders have called on PHMSA to improve alignment between the regulatory provisions being waived and special permit conditions. In response to a request for information on deregulation (90 FR 14593 (Apr. 3, 2025)), the Interstate Natural Gas Association of America (INGAA) criticized PHMSA’s practice of adopting special permits containing “numerous” conditions (Docket No. DOT-OST-2025-0026-0872 (May 5, 2025)). Other pipeline industry trade associations have echoed that criticism, calling on Congress to act to limit PHMSA’s imposition of special permit conditions “unrelated” to the regulatory provision being waived. Members of Congress have responded to those concerns, echoing interest in

streamlining special permit conditions in their public statements and draft legislation introduced, for example, through the Promoting Innovation in Pipeline Efficiency and Safety Act of 2023.

To address these concerns, PHMSA is proposing to amend § 190.341 to impose a limitation on the types of conditions that can be included special permits. The proposal would require that such conditions be directly and substantially related to the provision in the Federal Pipeline Safety Regulations being waived. PHMSA does not expect that the proposed revisions would have any adverse effect on pipeline safety.

Commenting

Instructions: Please include the docket number PHMSA-2025-0135 at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at <https://www.regulations.gov>.

Note: Comments are posted without changes or edits to <https://www.regulations.gov>, including any personal information provided. There is a privacy statement published on <https://www.regulations.gov>.

Privacy Act: In accordance with 5 United States Code (U.S.C.) 553(c), DOT solicits comments from the public to inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <https://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.dot.gov/privacy>.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA, 5 U.S.C. 552), CBI is exempt from public disclosure. It is important that you clearly designate the comments submitted as CBI if: your comments responsive to this document contain commercial or financial information that is customarily treated as private; you actually treat such information as private; and your comment is relevant or

responsive to this notice. Pursuant to 49 Code of Federal Regulations (CFR) 190.343, you may ask PHMSA to provide confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as “Confidential”; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information that you are submitting is CBI. Submissions containing CBI should be sent to Sayler Palabrica, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), 2nd Floor, 1200 New Jersey Avenue SE, Washington, D.C. 20590-0001, or by email at sayler.palabrica@dot.gov. Any materials PHMSA receives that is not specifically designated as CBI will be placed in the public docket.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Follow the online instructions for accessing the docket.

Alternatively, you may review the documents in person at the street address listed above.

II. REGULATORY ANALYSIS AND NOTICES:

A. Legal Authority

This proposed rule is published under the authority of the Secretary of Transportation set forth in the Federal Pipeline Safety Laws (49 U.S.C. 60101 *et seq.*) and delegated to the PHMSA Administrator pursuant to 49 CFR 1.97.

B. Executive Order 12866; Regulatory Planning and Review

Executive Order (E.O.) 12866 (“Regulatory Planning and Review”; 58 FR 51735 (Oct. 4, 1993)), as implemented by DOT Order 2100.6B (“Policies and Procedures for Rulemaking”), requires 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.” DOT Order 2100.6B specifies that regulations should generally “not be issued unless their benefits are expected to exceed their costs.” In arriving at those conclusions, E.O. 12866 requires that agencies should consider “both

quantifiable measures . . . and qualitative measures of costs and benefits that are difficult to quantify” and “maximize net benefits . . . unless a statute requires another regulatory approach.” E.O. 12866 also requires that “agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.” DOT Order 2100.6B directs that PHMSA and other Operating Administrations must generally choose the “least costly regulatory alternative that achieves the relevant objectives” unless required by law or compelling safety need.

E.O. 12866 and DOT Order 2100.6B also require that PHMSA submit “significant regulatory actions” to the Office of Information and Regulatory Affairs (OIRA) within the Executive Office of the President’s Office of Management and Budget (OMB) for review. This NPRM is not a significant regulatory action pursuant to E.O. 12866; it also has not designated this rule as a “major rule” as defined by the Congressional Review Act (5 U.S.C. 801 *et seq.*).

PHMSA has complied with the requirements in E.O. 12866 as implemented by DOT Order 2100.6B and made a preliminary determination that this proposed rule will result in cost savings by reducing regulatory burdens and regulatory uncertainty for pipeline facility operators by reducing barriers to the acceptance of special permits. PHMSA expects those cost savings will also result in reduced costs for the public to whom pipeline operators generally transfer a portion of their compliance costs. The cost savings of this rulemaking could not be quantified.

C. Executive Orders 14192 and 14219

This NPRM is expected to be a deregulatory action pursuant to E.O. 14192 (“Unleashing Prosperity Through Deregulation”; (90 FR 9065 (Feb. 6, 2025))). PHMSA estimates that the total costs of the NPRM on the regulated community will be less than zero. Nor does this rulemaking implicate any of the factors identified in section 2(a) of E.O. 14219 (“Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative”) indicative that a regulation is “unlawful . . . [or] that undermine[s] the national interest.” (90 FR 10583 (Feb. 25, 2025)).

D. Energy-Related Executive Orders 13211, 14154, and 14156

The President has declared in E.O. 14156 (“Declaring a National Energy Emergency”; (90 FR 8353 (Jan. 29, 2025))) a national emergency to address America’s inadequate energy development production, transportation, refining, and generation capacity. Similarly, E.O. 14154 (“Unleashing American Energy,” (90 FR 8353 (Jan. 29, 2025))) asserts a Federal policy to unleash American energy by ensuring access to abundant supplies of reliable, affordable energy from (inter alia) the removal of “undue burden[s]” on the identification, development, or use of domestic energy resources such as PHMSA-jurisdictional gasses and hazardous liquids. PHMSA preliminarily finds this NPRM is consistent with each of E.O. 14156 and E.O. 14154. The proposed rule (if finalized) will give affected pipeline operators a more efficient process for requesting waivers for pipeline safety requirements. PHMSA therefore expects the proposed regulatory amendments herein would in turn increase national pipeline transportation capacity and improve pipeline operators’ ability to provide abundant, reliable, affordable natural gas and hazardous liquid products in response to residential, commercial, and industrial demand.

However, this proposed rule is not a “significant energy action” under E.O. 13211 (“Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use”; (66 FR 28355 (May 22, 2001))), which requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” Because this proposed rule is not a significant action under E.O. 12866, it will not have a significant adverse effect on supply, distribution, or energy use; OIRA has therefore not designated this NPRM as a significant energy action.

E. Executive Order 13132: Federalism

PHMSA analyzed this NPRM in accordance with the principles and criteria contained in E.O. 13132 (“Federalism”; 64 FR 43255 (Aug. 10, 1999)) and the Presidential Memorandum (“Preemption”) published in the Federal Register on May 22, 2009 (74 FR 24693). E.O. 13132 requires agencies to ensure meaningful and timely input by State and local officials in the

development of regulatory policies that may have “substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.”

While the amendments proposed in this NPRM may operate to preempt some State requirements, they would not have substantial direct effects on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government. Section 60104(c) of Federal Pipeline Safety Laws prohibits certain State safety regulation of interstate pipelines. Under Federal Pipeline Safety Laws, States that have submitted a current certification under section 60105(a) can augment Federal pipeline safety requirements for intrastate pipelines regulated by PHMSA but may not approve safety requirements less stringent than those required by Federal law. A State may also regulate an intrastate pipeline facility that PHMSA does not regulate. The preemptive effect of the proposed regulatory amendments in this NPRM is limited to the minimum level necessary to achieve the objectives of the Federal Pipeline Safety Laws. Therefore, the consultation and funding requirements of E.O. 13132 do not apply.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to conduct a Regulatory Flexibility Analysis (RFA) for a rule subject to notice-and-comment rulemaking under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) unless the agency head certifies that the proposed rule in the rulemaking will not have a significant economic impact on a substantial number of small entities. E.O. 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”; 67 FR 53461 (Aug. 16, 2002)) obliges agencies to establish procedures promoting compliance with the Regulatory Flexibility Act. DOT posts its implementing guidance on a dedicated webpage. This NPRM was developed in accordance with E.O. 13272 and DOT implementing guidance to ensure compliance with the Regulatory Flexibility Act. The proposed rule is expected to reduce regulatory burdens. Therefore, PHMSA

certifies the proposed rulemaking will not have a significant impact on a substantial number of small entities.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act (UMRA, 2 U.S.C. 1501 *et seq.*) requires agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector. For any proposed or direct final rule that includes a Federal mandate that may result in the expenditure by state, local, and Tribal governments, in the aggregate of \$100 million or more (in 1996 dollars) in any given year, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the Federal mandate.

This NPRM does not impose unfunded mandates under UMRA because it does not result in costs of \$100 million or more (in 1996 dollars) per year for either State, local, or Tribal governments, or to the private sector.

H. National Environmental Policy Act

The National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et. seq.*) requires that Federal agencies assess and consider the impact of major Federal actions on the human and natural environment.

PHMSA analyzed this proposed rule in accordance with NEPA and has preliminarily determined that the rulemaking should not adversely affect safety and therefore will not significantly affect the quality of the human and natural environment. The public is invited to comment on the impact of the proposed action.

I. Executive Order 13175

PHMSA analyzed this NPRM according to the principles and criteria in Consultation and DOT Order 5301.1A (“Department of Transportation Tribal Consultation Policies and Procedures”). E.O. 13175 requires agencies to assure meaningful and timely input from Tribal government representatives in the development of rules that significantly or uniquely affect

Tribal communities by imposing “substantial direct compliance costs” or “substantial direct effects” on such communities or the relationship or distribution of power between the Federal Government and Tribes.

PHMSA assessed the impact of the NPRM and preliminarily determined that it will not significantly or uniquely affect Tribal communities or Indian Tribal governments. The rulemaking’s proposed regulatory amendments have a broad, national scope; therefore, it would not significantly or uniquely affect Tribal communities, much less impose substantial compliance costs on Native American Tribal governments or mandate Tribal action. For these reasons, PHMSA has preliminarily concluded that the funding and consultation requirements of E.O. 13175 and DOT Order 5301.1A do not apply.

J. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d) requires that PHMSA provide interested members of the public and affected agencies with an opportunity to comment on information collection and recordkeeping requests. This rulemaking will not create, amend, or rescind any existing information collections.

K. Executive Order 13609 and International Trade Analysis

E.O. 13609 (“Promoting International Regulatory Cooperation”; 77 FR 26413 (May 4, 2012)) requires agencies consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing

any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA engages with international standards setting bodies to protect the safety of the American public. PHMSA has assessed the effects of the NPRM and has preliminarily determined that its proposed regulatory amendments would not cause unnecessary obstacles to foreign trade.

L. Cybersecurity and Executive Order 14028

E.O. 14028 (“Improving the Nation's Cybersecurity”; 86 FR 26633 (May 17, 2021)) directed the Federal government to improve its efforts to identify, deter, and respond to “persistent and increasingly sophisticated malicious cyber campaigns.” PHMSA has considered the effects of the NPRM rule and has determined that its proposed regulatory amendments would not materially affect the cybersecurity risk profile for pipeline facilities.

List of Subjects in 49 CFR Part 190

Pipeline Safety

For the reasons set forth above, PHMSA proposes to amend 49 CFR part 190 as follows:

**PART 190 – TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE:
MINIMUM FEDERAL SAFETY STANDARDS**

1. The authority citation for 49 CFR part 190 continues to read as follows:

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

2. Amend § 190.341 by revising the second sentence of paragraph (d)(2) to read as follows,

§ 190.341 Special Permit

* * * * *

(d) * * *

(2) * * * The Associate Administrator may only impose conditions that are directly and substantially related to the relevant standard or regulation being waived in the order granting the application. * * *

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Issued in Washington, D.C., on June 26, 2025, under the authority delegated in 49 CFR 1.97.

Benjamin D. Kochman,

Acting Administrator.

[FR Doc. 2025-12132 Filed: 6/27/2025 4:15 pm; Publication Date: 7/1/2025]