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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 190

[Docket No. PHMSA-2026-1537; Amdt. No. 190-25]

RIN 2137-AG41

Pipeline Safety: Declaratory Order Procedures

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

ACTION: Final rule.

SUMMARY: PHMSA is adopting a new regulation at 49 CFR 190.13 to establish procedures for issuing declaratory orders.

DATES: Effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Timothy O'Shea, Attorney-Advisor, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue S.E., Washington, D.C., 20590, timothy.o'shea@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion

The Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2020 directed PHMSA to "allow an operator to request that an issue of controversy or uncertainty be addressed through a declaratory order in accordance with section 554(e) of title 5." Pub. L. No. 116-260, 134 Stat. 2222, Sec. 108(a)(2), Dec. 27, 2020 (codified at 49 U.S.C. § 60117(b)(1)(J)). PHMSA has adopted pipeline safety enforcement and regulatory procedures in part 190, but those regulations do not address the issuance of declaratory orders under the PIPES Act of 2020

mandate. PHMSA has indicated in prior proceedings that it is "committed to including an opportunity for public comment in circumstances in which it exercises its authority to issue a declaratory order." (88 FR 77245 (Nov. 9, 2023)). In writing this final rule, PHMSA reviewed the declaratory order processes used by other agencies, including the U.S. Maritime Administration, the Federal Maritime Commission, and the Federal Communications Commission.

This final rule adopts procedures for the issuance of declaratory orders in § 190.13, including filing and public notice requirements and provisions for the granting and denial of petitions. It also addresses the availability of petition for reconsiderations and judicial review.

II. Regulatory Analyses and Notices:

A. Legal Authority

This final rule is published under the authority of the Secretary of Transportation as 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. The amendments adopted herein affect provisions in part 190 governing PHMSA's procedures and therefore pertain to "rules of agency organization, procedure, or practice" that are being published as a final rule without notice and comment and with an immediate effective date as permitted by 5 U.S.C. § 553(b)(A). PHMSA also finds that publication of a proposed rulemaking on which comment is solicited would be "unnecessary" pursuant to section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. § 551 *et seq*.) because this rulemaking merely codifies PHMSA's current, informal procedures governing the submission and review of petitions for declaratory orders.

B. Executive Order 12866

E.O. 12866, *Regulatory Planning and Review*, as implemented by DOT Order 2100.6B ("Policies and Procedures for Rulemaking") and DOT Order 2100.7 ("Ensuring Reliance upon Sound Economic Analysis in Department of Transportation Policies, Programs, and Activities"), 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." 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. DOT Order 2100.6B also specifies that regulations should generally "not be issued unless their benefits are expected to exceed their costs" except where required by law or compelling safety need. DOT Order 2100.7 requires that "all rulemaking activities shall be based on sound economic principles and analysis supported by rigorous cost-benefit requirement."

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 final rule is a not significant regulatory action pursuant to E.O. 12866; OMB 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 procedural and analytical requirements in E.O. 12866 as implemented by DOT Order 2100.6B and DOT Order 2100.7. This final rule does not impose new burdens, as the changes made therein are non-substantive and do not impose additional requirements to how previous petitions have been processed. By establishing a written procedure, the final rule will introduce uniformity in the petition process. PHMSA also determined that the final rule will not have any adverse safety impacts.

C. Executive Orders 14192 and 14219

This final rule is considered a deregulatory action pursuant to E.O. 14192, *Unleashing Prosperity Through Deregulation*. PHMSA estimates that the total costs of the rule on the regulated community will be *de minimis*, as the non-substantive changes of this rulemaking do not impose any new requirements on pipeline operators, and the changes therein should improve the clarity and compliance with PHMSA regulations. Nor does this rule 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."

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

The President has declared in E.O. 14156, *Declaring a National Energy Emergency*, a National emergency to address America's inadequate energy development production, transportation, refining, and generation capacity. Similarly, E.O. 14154, *Unleashing American Energy*, asserts a Federal policy to unleash American energy by ensuing 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 gases and hazardous liquids. PHMSA finds this final rule is consistent with each of E.O. 14156 and E.O. 14154. The final rule will give clarity to pipeline operators on how they may request a declaratory order to address an issue of controversy or uncertainty regarding the Federal Pipeline Safety Regulations. The provisions of this final rule are non-substantive and will not impose new requirements on pipeline operators.

This final rule is not a "significant energy action" under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*, which requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." Because this final rule is not a significant action under E.O. 12866, it will not have a significant adverse effect on supply, distribution, or energy use.

E. Executive Order 13132: Federalism

PHMSA analyzed this final rule in accordance with the principles and criteria contained in E.O. 13132, *Federalism*, and the Presidential Memorandum ("Preemption") published in the Federal Register on May 22, 2009. E.O. 13132 requires agencies to assure 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 final rule may operate to preempt some State requirements, it would not impose any regulation that has substantial direct effects on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government. Section 60104(c) of the Federal Pipeline Safety Laws prohibits certain State safety regulation of interstate pipelines. Under the 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 regulatory amendments in this final rule 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 Final Regulatory Flexibility Analysis (FRFA) for a final rule subject to notice-and-comment rulemaking, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule (*see* 5 U.S.C. §§ 603(a) and 604(a)).

PHMSA is not required to publish a notice of proposed rulemaking for this final rule, so the RFA does not apply. However, PHMSA expects no affected operators will face significant costs from regulatory amendments clarifying procedures for declaratory orders; such clarification will likely reduce regulatory burdens as it enhances regulatory certainty in the procedures governing declaratory orders.

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 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 ($203 million in 2024 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 final rule does not impose unfunded mandates under UMRA because it does not result in costs of $100 million or more in 1996 dollars ($203 million in 2024 dollars) per year for either State, local, or Tribal governments, or to the private sector.

H. National Environmental Policy Act

PHMSA has analyzed this rule pursuant to the National Environmental Policy Act (NEPA, 42 U.S.C. § 4321 *et seq.*) and has determined it is categorically excluded under 23 CFR 771.117(c)(20), which applies to the promulgation of rules, regulations, and directives. Under section 9 of DOT Order 5610.1D ("DOT's Procedures for Considering Environmental Impacts"), PHMSA may apply a categorical exclusion (CE) established in another Operating Administration's procedures. PHMSA followed the requirements outlined in DOT Order 5610.1D to apply a CE issued by the Federal Highway Administration to this deregulatory action. PHMSA does not anticipate any adverse environmental impacts from this rule, and

PHMSA has determined no unusual circumstances are present under 23 CFR 771.117(b). PHMSA's CE Determination memo for this action is available on PHMSA's website.[1]

I. Executive Order 13175

PHMSA analyzed this final rule according to the principles and criteria in E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*, 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 final rule and determined that it will not significantly or uniquely affect Tribal communities or Indian Tribal governments. The rulemaking's regulatory amendments have a broad, national scope; therefore, this final rule will 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 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.

[1] PHMSA, *Implementing Procedures*, https://www.phmsa.dot.gov/planning-and-analytics/environmental-analysis-and-compliance/implementing-procedures

K. Executive Order 13609 and International Trade Analysis

E.O. 13609, *Promoting International Regulatory Cooperation*, 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. No. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. No. 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 final rule and has determined that its regulatory amendments will not cause unnecessary obstacles to foreign trade.

L. Cybersecurity and Executive Order 14028

E.O. 14028, *Improving the Nation's Cybersecurity*, directs 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 final rule and has determined that its regulatory amendments will not materially affect the cybersecurity risk profile for pipeline facilities.

List of Subjects in 49 CFR Part 190

Administrative practice and procedure.

In consideration of the foregoing, PHMSA amends 49 CFR part 190 as follows:

PART 190—PIPELINE SAFETY ENFORCEMENT AND REGULATORY PROCEDURES

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

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

2. Add § 190.13 to Subpart A to read as follows:

§ 190.13 Declaratory Orders.

(a) *In general.* An operator may request that an issue of controversy or uncertainty be addressed through the issuance of a declaratory order in accordance with this section and 5 U.S.C. 554(e).

(b) *Filing of petition.* A petition for declaratory order is filed by sending the petition to the Associate Administrator, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. A petition for declaratory order must include a complete and accurate statement of the relevant facts, identification of an issue of controversy or uncertainty, and an explanation of how a declaratory order would remove the uncertainty or terminate the controversy.

(c) *Notice of petition.* Upon receiving a petition for declaratory order that satisfies the requirements of this section, the Associate Administrator will publish a notice acknowledging receipt of the petition along with a request for public comment in the *Federal Register*.

(d) *Issuance of a declaratory order.* After considering any comments, the Associate Administrator will issue a declaratory order or deny the petition. A declaratory order will include a statement of the relevant facts, application of law, and determination as to the issue of controversy or uncertainty. A declaratory order is effective upon issuance to the requestor and

constitutes a legally binding determination upon the requestor and the facts described in the order.

(e) *Denial of petition.* If the Associate Administrator denies a petition for declaratory order, the Associate Administrator will respond with a brief statement of the grounds for denial.

(f) *Petitions for reconsideration; finality; judicial review.* The operator may petition for reconsideration of a declaratory order issued under this section. A petition for reconsideration must be received by the Associate Administrator, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590, no later than 20 days after issuance of the order. The filing of a petition under this section does not stay the legal effect of the order, unless the Associate Administrator provides otherwise. If the Associate Administrator receives a petition for reconsideration under this section, the decision on reconsideration is the final administrative action. Any application for judicial review must be filed no later than 89 days after the issuance of the order or the decision on reconsideration in accordance with 49 U.S.C. 60119(a).

Issued in Washington, D.C. on April 22, 2026, under authority delegated in 49 CFR 1.97.

Paul J. Roberti,

Administrator.

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