Billing Code: 4910-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 190

[Docket No. PHMSA-2026-1538; Amdt. No. 190-26]

RIN 2137-AG42

Pipeline Safety: Consent Orders.

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

ACTION: Final rule.

SUMMARY: PHMSA is amending its procedural regulations to clarify that consent agreements may be used to resolve all PHMSA enforcement proceedings, including cases with civil penalties.

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

FOR FURTHER INFORMATION CONTACT:

Kathleen Maitland, 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, kathleen.maitland@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion

PHMSA regulations governing enforcement proceedings in 49 CFR 190 allow parties to resolve certain matters by entering into consent agreements and orders. However, the regulations do not specifically authorize the use of consent agreements and orders to resolve all enforcement proceedings, including those involving civil penalties.

In this final rule, PHMSA is clarifying that consent agreements and orders may be used to resolve all enforcement proceedings brought under the part 190, subpart B regulations.

Specifically, the final rule amends § 190.219(a) to state that any pending enforcement proceeding may be resolved by consent agreement and order. It also amends § 190.219(b)(3) to reference enforcement notices generally, rather than notices of probable violation specifically. Finally, the final rule includes as an available response option in § 190.208(a) a request for execution of a consent agreement and order for notices of probable violation that include a civil penalty.

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 49 CFR part 190 governing PHMSA's enforcement 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 similarly 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 aligns PHMSA enforcement regulations with current practices for resolving some enforcement actions.

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." 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. By codifying PHMSA's current, informal procedures governing the submission and review of petitions for declaratory orders, the rulemaking places guardrails preventing potential abuse of agency discretion in the review of such petitions. 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 clarify that consent agreements may be used to resolve all PHMSA enforcement proceedings, including cases with civil penalties. 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; OIRA has therefore not designated this final rule as a significant energy action.

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."

Because this final rule governs PHMSA's enforcement procedures, 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. Therefore, the consultation and funding requirements of E.O. 13132 do not apply.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, 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 clarifying that consent orders may be used to resolve all PHMSA enforcement proceedings; such clarification will likely reduce regulatory burdens as it enhances regulatory certainty in the procedures governing resolution of PHMSA enforcement proceedings.

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) 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 (OA's) procedures. PHMSA followed the requirements outlined in DOT Order 5610.1D to apply the Federal Highway Administration's (FHWA's) CE 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 Categorical Exclusion Determination memo for this action is available on PHMSA's website.[1]

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

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 procedural 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.

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, to deter, and to 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, Penalties, Pipeline safety.

In consideration of the foregoing, 49 CFR part 190 is amended to read 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. In § 190.208, redesignate paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5) and add paragraph (a)(3) to read as follows:

§ 190.208 Response options.

* * * * *

(a) * * *

(3) Request the execution of a consent order under § 190.219.

* * * * *

3. In § 190.219 revise paragraphs (a) and (b)(3) to read as follows:

§ 190.219 Consent Order.

(a) At any time prior to the resolution of an enforcement proceeding under subpart B of this part, the Regional Director and 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.

(b) * * *

(3) An acknowledgement that the notice may be used to construe the terms of the consent order; and

* * * * *

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

Paul J. Roberti,

Administrator.

[FR Doc. 2026-08055 Filed: 4/23/2026 8:45 am; Publication Date: 4/24/2026]