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Title 49 —Transportation

Subtitle B —Other Regulations Relating to Transportation

Chapter I —Pipeline and Hazardous Materials Safety Administration, Department of Transportation

Subchapter D —Pipeline Safety

Part 190 —Pipeline Safety Enforcement and Regulatory Procedures

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Source: 45 FR 20413, Mar. 27, 1980, unless otherwise noted.

Subpart B Enforcement

- § 190.201 Purpose and scope.
- § 190.203 Inspections and investigations.
- § 190.205 Warnings.
- § 190.206 Amendment of plans or procedures.
- § 190.207 Notice of probable violation.
- § 190.208 Response options.
- § 190.209 Case file.
- § 190.210 Separation of functions.
- § 190.211 Hearing.
- § 190.212 Presiding official, powers, and duties.
- § 190.213 Final order.

§ 190.215 [Reserved]

Compliance Orders

- § 190.217 Compliance orders generally.
- § 190.219 Consent order.

Civil Penalties

- § 190.221 Civil penalties generally.
- § 190.223 Maximum penalties.
- § 190.225 Assessment considerations.
- § 190.227 Payment of penalty.

§§ 190.229-190.231 [Reserved]

Specific Relief

- § 190.233 Corrective action orders.
- § 190.235 Civil actions generally.
- § 190.236 Emergency orders: Procedures for issuance and rescission.
- § 190.237 Emergency orders: Petitions for review.
- § 190.239 Safety orders.
- § 190.241 Finality.

§ 190.243 Petitions for reconsideration.

Editorial Note: Nomenclature changes to part 190 appear at 78 FR 58908, Sept. 25, 2013.

Subpart B—Enforcement

§ 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.
- (b) A person who is the subject of action pursuant to this subpart may be represented by legal counsel at all stages of the proceeding.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18513, Apr. 26, 1996; Amdt. 190-16, 78 FR 58909, Sept. 25, 2013]

§ 190.203 Inspections and investigations.

- (a) Officers, employees, or agents authorized by the Associate Administrator for Pipeline Safety, PHMSA, upon presenting appropriate credentials, are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining the compliance of such persons with the requirements of 49 U.S.C. 60101 *et seq.*, or regulations or orders issued thereunder.
- (b) Inspections are ordinarily conducted pursuant to one of the following:
 - (1) Routine scheduling by the Regional Director of the Region in which the facility is located;
 - (2) A complaint received from a member of the public;
 - (3) Information obtained from a previous inspection;
 - (4) Report from a State Agency participating in the Federal Program under 49 U.S.C. 60105;
 - (5) Pipeline accident or incident; or
 - (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.

- (d) To the extent necessary to carry out the responsibilities under 49 U.S.C. 60101 *et seq.*, the Administrator, or the Associate Administrator, may require testing of portions of pipeline facilities that have been involved in, or affected by, an accident. However, before exercising this authority, the Administrator, or the Associate Administrator, shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, the National Transportation Safety Board for performing the testing.
- (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.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-3, 56 FR 31090, July 9, 1991; Amdt. 190-6, 61 FR 18513, Apr. 26, 1996; Amdt. 190-7, 61 FR 27792, June 3, 1996; Amdt. 190-7, 63 FR 7722, Feb. 17, 1998; 70 FR 11137, Mar. 8, 2005; Amdt. 190-16, 78 FR 58909, Sept. 25, 2013]

§ 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.

[Amdt. 190-16, 78 FR 58909, Sept. 25, 2013]

§ 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.

[Amdt. 190-16, 78 FR 58910, Sept. 25, 2013]

§ 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) A notice of probable violation issued under this section shall include:
- (1) Statement of the provisions of the laws, regulations or orders which the respondent is alleged to have violated and a statement of the evidence upon which the allegations are based;
 - (2) Notice of response options available to the respondent under § 190.208;
 - (3) If a civil penalty is proposed under § 190.221, the amount of the proposed civil penalty and the maximum civil penalty for which respondent is liable under law; and
 - (4) If a compliance order is proposed under § 190.217, a statement of the remedial action being sought in the form of a proposed compliance order.
- (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.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18513, Apr. 26, 1996; Amdt. 190-16, 78 FR 58910, Sept. 25, 2013]

§ 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.

[Amdt. 190-16, 78 FR 58910, Sept. 25, 2013]

§ 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.

[Amdt. 190-16, 78 FR 58910, Sept. 25, 2013]

§ 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.

[Amdt. 190-16, 78 FR 58911, Sept. 25, 2013]

§ 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.

[Amdt. 190-16, 78 FR 58911, Sept. 25, 2013]

§ 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.

[Amdt. 190-16, 78 FR 58911, Sept. 25, 2013]

§ 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.

[Amdt. 190-16, 78 FR 58911, Sept. 25, 2013]

§ 190.215 [Reserved]

COMPLIANCE ORDERS

§ 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.

[Amdt. 190-16, 78 FR 58912, Sept. 25, 2013]

§ 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.
- (b) A consent order executed under paragraph (a) of this section shall include:
 - (1) An admission by the respondent of all jurisdictional facts;
 - (2) An express waiver of further procedural steps and of all right to seek judicial review or otherwise challenge or contest the validity of that order;
 - (3) An acknowledgement that the notice of probable violation may be used to construe the terms of the consent order; and
 - (4) A statement of the actions required of the respondent and the time by which such actions shall be accomplished.
- (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).

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18514, Apr. 26, 1996; Amdt. 190-16, 78 FR 58912, Sept. 25, 2013]

CIVIL PENALTIES

§ 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.

[Amdt. 190-16, 78 FR 58912, Sept. 25, 2013]

§ 190.223 Maximum penalties.

- (a) Any person found to have violated a provision of 49 U.S.C. 60101, et seq., or any regulation in 49 CFR parts 190 through 199, or order issued pursuant to 49 U.S.C. 60101, et seq. or 49 CFR part 190, is subject to an administrative civil penalty not to exceed \$272,926 for each violation for each day the violation continues, with a maximum administrative civil penalty not to exceed \$2,729,245 for any related series of violations.
- (b) Any person found 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 found to have violated any standard or order under 49 U.S.C. 60103 is subject to an administrative civil penalty not to exceed \$99,704, 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 \$1,584, 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.

[Amdt. 190-16, 78 FR 58912, Sept. 25, 2013, as amended at 81 FR 42566, June 30, 2016; Amdt. 190-17, 82 FR 19328, Apr. 27, 2017; 84 FR 37071, July 31, 2019; 86 FR 1756, Jan 11, 2021; 86 FR 23252, May 3, 2021; 87 FR 15866, Mar. 21, 2022; 88 FR 1125, Jan. 6, 2023; 88 FR 89560, Dec. 28, 2023; 89 FR 106294, Dec. 30, 2024]

§ 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.

[Amdt. 190-16, 78 FR 58912, Sept. 25, 2013]

§ 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.
- (b) Payment of a civil penalty assessed in a final order issued under § 190.213 or affirmed in a decision on a petition for reconsideration must be made within 20 days after receipt of the final order or decision. Failure to do so will result in the initiation of collection action, including the accrual of interest and penalties, in accordance with 31 U.S.C. 3717 and 49 CFR part 89.

[Amdt. 190-7, 61 FR 27792, June 3, 1996, as amended at 70 FR 11138, Mar. 8, 2005; 73 FR 16567, Mar. 28, 2008; Amdt. 190-16, 78 FR 58912, Sept. 25, 2013]

§§ 190.229-190.231 [Reserved]

SPECIFIC RELIEF

§ 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.

- (d) The Associate Administrator may find a pipeline facility to be hazardous under paragraph (a) of this section:
 - (1) If under the facts and circumstances the Associate Administrator determines the particular facility is hazardous to life, property, or the environment; or
 - (2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which the Associate Administrator determines is hazardous to life, property, or the environment, unless the operator involved demonstrates to the satisfaction of the Associate Administrator that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous.
- (e) In making a determination under paragraph (d) of this section, the Associate Administrator shall consider, if relevant:
 - (1) The characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction or assembly;
 - (2) The nature of the materials transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such materials are transported, and the pressure required for such transportation;
 - (3) The characteristics of the geographical areas in which the pipeline facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas;
 - (4) Any recommendation of the National Transportation Safety Board issued in connection with any investigation conducted by the Board; and
 - (5) Such other factors as the Associate Administrator may consider appropriate.
- (f) A corrective action order shall contain the following information:
 - (1) A finding that the pipeline facility is or would be hazardous to life, property, or the environment.
 - (2) The relevant facts which form the basis of that finding.
 - (3) The legal basis for the order.
 - (4) The nature and description of any particular corrective action required of the respondent.
 - (5) The date by which the required corrective action must be taken or completed and, where appropriate, the duration of the order.

- (6) If the opportunity for a hearing was waived pursuant to paragraph (b) of this section, a statement that an opportunity for a hearing will be available at a particular time and location after issuance of the order.
- (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.
- (h) At any time after a corrective action order issued under this section has become effective, the Associate Administrator may request the Attorney General to bring an action for appropriate relief in accordance with § 190.235.
- (i) Upon petition by the Attorney General, the District Courts of the United States shall have jurisdiction to enforce orders issued under this section by appropriate means.

[70 FR 11138, Mar. 8, 2005, as amended by Amdt. 190-16, 78 FR 58912, Sept. 25, 2013]

§ 190.235 Civil actions generally.

Whenever it appears to the Associate Administrator that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of 49 U.S.C. 60101 *et seq.*, or any regulations issued thereunder, the Administrator, or the person to whom the authority has been delegated, may request the Attorney General to bring an action in the appropriate U.S. District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, civil penalties, and punitive damages as provided under 49 U.S.C. 60120 and 49 U.S.C. 5123.

[70 FR 11139, Mar. 8, 2005]

§ 190.236 Emergency orders: Procedures for issuance and rescission.

- (a) **Determination of imminent hazard.** When the Administrator determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, constitutes or is causing an imminent hazard, as defined in § 190.3, the Administrator may issue or impose an emergency order, without advance notice or an opportunity for a hearing, but only to the extent necessary to abate the imminent hazard. The order will contain a written description of:
 - (1) The violation, condition, or practice that constitutes or is causing the imminent hazard;
 - (2) Those entities subject to the order;
 - (3) The restrictions, prohibitions, or safety measures imposed;
 - (4) The standards and procedures for obtaining relief from the order;
 - (5) How the order is tailored to abate the imminent hazard and the reasons the authorities under 49 U.S.C. 60112 and 60117(l) are insufficient to do so; and
 - (6) How the considerations listed in paragraph (c) of this section were taken into account.
- (b) **Consultation.** In considering the factors under paragraph (c) of this section, the Administrator shall consult, as the Administrator determines appropriate, with appropriate Federal agencies, State agencies, and other entities knowledgeable in pipeline safety or operations.

- (c) **Considerations.** Prior to issuing an emergency order, the Administrator shall consider the following, as appropriate:
- (1) The impact of the emergency order on public health and safety;
 - (2) The impact, if any, of the emergency order on the national or regional economy or national security;
 - (3) The impact of the emergency order on the ability of owners and operators of pipeline facilities to maintain reliability and continuity of service to customers; and
 - (4) The results of any consultations with appropriate Federal agencies, State agencies, and other entities knowledgeable in pipeline safety or operations.
- (d) **Service.** The Administrator will provide service of emergency orders in accordance with § 190.5 to all operators of gas and hazardous liquid pipeline facilities that the Administrator reasonably expects to be affected by the emergency order. In addition, the Administrator will publish emergency orders in the FEDERAL REGISTER and post them on the PHMSA website as soon as practicable upon issuance. Publication in the FEDERAL REGISTER will serve as general notice of an emergency order. Each emergency order must contain information specifying how pipeline operators and owners may respond to the emergency order, filing procedures, and service requirements, including the address of DOT Docket Operations and the names and addresses of all persons to be served if a petition for review is filed.
- (e) **Rescission.** If an emergency order has been in effect for more than 365 days, the Administrator will make an assessment regarding whether the unsafe condition or practice, or combination of unsafe conditions and practices, constituting or causing an imminent hazard, as defined in § 190.3, continues to exist. If the imminent hazard does not continue to exist, the Administrator will rescind the emergency order and follow the service procedures set forth in § 190.236(d). If the imminent hazard underlying the emergency order continues to exist, PHMSA will initiate a rulemaking action as soon as practicable.

[Amdt. 190-21, 84 FR 52027, Oct. 1, 2019]

§ 190.237 Emergency orders: Petitions for review.

- (a) **Requirements.** A pipeline owner or operator that is subject to and aggrieved by an emergency order may petition the Administrator for review to determine whether the order will remain in place, be modified, or be terminated. A petition for review must:
- (1) Be in writing;
 - (2) State with particularity each part of the emergency order that is sought to be modified or terminated and include all information, evidence and arguments in support thereof;
 - (3) State whether the petitioner requests a formal hearing in accordance with 5 U.S.C. 554, and, if so, any material facts in dispute; and,
 - (4) Be filed and served in accordance with paragraph (h) of this section.
- (b) **Modification of petitions.** A petitioner may modify its petition for review to provide new information that materially affects the review proceeding and that is timely submitted. Where the petitioner has not requested a formal hearing, the Associate Administrator will make the determination whether to accept the new information. Where a case has been assigned for a formal hearing, the presiding administrative law judge will determine whether to accept the new information.

- (c) **Response to the petition for review.** An attorney designated by the Office of Chief Counsel may file and serve, in accordance with paragraph (h) of this section, a response to the petition, including appropriate pleadings, within five calendar days of receipt of the petition by the Chief Counsel.
- (d) **Associate Administrator's responsibilities.** —
 - (1) **Formal hearing requested.** Upon receipt of a petition for review that includes a formal hearing request under this section, the Associate Administrator will, within three days after receipt of the petition, assign the petition to the Office of Hearings, DOT, for a formal hearing.
 - (2) **No formal hearing requested.** Upon receipt of a petition for review that does not include a formal hearing request, the Associate Administrator will issue an administrative decision on the merits within 30 days of receipt of the petition for review. The Associate Administrator's decision constitutes the agency's final decision.
 - (3) **Consolidation.** If the Associate Administrator receives more than one petition for review and they share common issues of law or fact, the Associate Administrator may consolidate the petitions for the purpose of complying with this section, provided such consolidation occurs prior to the commencement of a formal hearing. The Associate Administrator may reassign a petition that does not request a formal hearing to the Office of Hearings, DOT, provided the petition otherwise meets the requirements for consolidation. If the Associate Administrator has consolidated multiple petitions that do not request a formal hearing, he may de-consolidate such petitions if there has been a change in circumstances that, in his discretion, warrant separation for the purpose of rendering a final decision.
- (e) **Formal Hearings.** Formal hearings must be conducted by an administrative law judge assigned by the chief administrative law judge of the Office of Hearings, DOT. The administrative law judge may:
 - (1) Administer oaths and affirmations;
 - (2) Issue subpoenas as provided by the appropriate statutes and agency regulations (e.g., 49 U.S.C. 60117 and 49 CFR 190.7);
 - (3) Adopt the relevant Federal Rules of Civil Procedure for the United States District Courts for the procedures governing the hearings, when appropriate;
 - (4) Adopt the relevant Federal Rules of Evidence for United States Courts and Magistrates for the submission of evidence, when appropriate;
 - (5) Take or cause depositions to be taken;
 - (6) Examine witnesses at the hearing;
 - (7) Rule on offers of proof and receive relevant evidence;
 - (8) Convene, recess, adjourn or otherwise regulate the course of the hearing;
 - (9) Hold conferences for settlement, simplification of the issues, or any other proper purpose; and
 - (10) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of an issue raised.
- (f) **Parties.** The petitioner may appear and be heard in person or by an authorized representative. PHMSA will be represented by an attorney designated by the Office of Chief Counsel.

- (g) **Burden of proof.** Except in the case of an affirmative defense, PHMSA shall bear the burden of proving, by a preponderance of the evidence, the validity of an emergency order in a proceeding under this section by a preponderance of the evidence. A party asserting an affirmative defense shall bear the burden of proving, by a preponderance of the evidence, the affirmative defense in a proceeding under this section.
- (h) **Filing and service.**
 - (1) Each petition, pleading, motion, notice, order, or other document submitted in connection with an emergency order issued under this section must be filed (commercially delivered or submitted electronically) with: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590. All documents filed will be published on the Department's docket management website, <http://www.regulations.gov>. The emergency order must state the above filing requirements and the address of DOT Docket Operations.
 - (2) Each document filed in accordance with paragraph (h)(1) of this section must be concurrently served upon the following persons:
 - (i) Associate Administrator for Pipeline Safety, OPS, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, East Building, Washington, DC 20590;
 - (ii) Chief Counsel, PHC, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, East Building, Washington, DC 20590 (facsimile: 202-366-7041); and
 - (iii) If the petition for review requests a formal hearing, the Chief Administrative Law Judge, U.S. Department of Transportation, Office of Hearings, 1200 New Jersey Ave SE, c/o Mail Center (E11-310), Washington, DC 20590 (facsimile: 202-366-7536).
 - (3) Service must be made in accordance with § 190.5 of this part. The emergency order must state all relevant service requirements and list the persons to be served and may be updated as necessary.
 - (4) **Certificate of service.** Each order, pleading, motion, notice, or other document must be accompanied by a certificate of service specifying the manner in which and the date on which service was made.
 - (5) If applicable, service upon a person's duly authorized representative, agent for service, or an organization's president or chief executive officer constitutes service upon that person.
- (i) **Report and recommendation.** The administrative law judge must issue a report and recommendation to the Associate Administrator at the close of the record. The report and recommendation must:
 - (1) Contain findings of fact and conclusions of law and the grounds for the decision, based on the material issues of fact or law presented on the record;
 - (2) Be served on the parties to the proceeding; and
 - (3) Be issued no later than 25 days after receipt of the petition for review by the Associate Administrator.
- (j) **Petition for reconsideration.**
 - (1) A petitioner aggrieved by the administrative law judge's report and recommendation may file a petition for reconsideration with the Associate Administrator. The petition for reconsideration must be filed:

- (i) Not more than five days after the administrative law judge has issued a report and recommendation under paragraph (i) of this section, provided such report and recommendation is issued 20 days or less after the petition for review was filed with PHMSA; or
 - (ii) Not more than two days after the administrative law judge has issued his or her report and recommendation under paragraph (h) of this section, where such report and recommendation are issued more than 20 days after the petition for review was filed with PHMSA.
- (2) The Associate Administrator must issue a decision on a petition for reconsideration no later than 30 days after receipt of the petition for review. Such decision constitutes final agency action on a petition for review.
- (k) **Judicial review.** (1) After the issuance of a final agency decision pursuant to paragraphs (d)(2) or (j)(2) of this section, or the issuance of a written determination by the Administrator pursuant to paragraph (l) of this section, a pipeline owner or operator subject to and aggrieved by an emergency order issued under § 190.236 may seek judicial review of the order in the appropriate district court of the United States. The filing of an action seeking judicial review does not stay or modify the force and effect of the agency's final decision under paragraphs (d)(2) or (j)(3) of this section, or the written determination under paragraph (l) of this section, unless stayed or modified by the Administrator.
- (l) **Expiration of order.**
 - (1) **No petition for review filed:** If no petition for review is filed challenging the emergency order, then the emergency order shall remain in effect until PHMSA determines, in writing, that the imminent hazard no longer exists or the order is terminated by a court of competent jurisdiction.
 - (2) **Petition for review filed and decision rendered within 30 days.** If the Associate Administrator renders a final decision upon a petition for review within 30 days of its receipt by PHMSA, any elements of the emergency order upheld or modified by the decision shall remain in effect until PHMSA determines, in writing, that the imminent hazard no longer exists or the order is terminated by a court of competent jurisdiction.
 - (3) **Petition for review filed but no decision rendered within 30 days.** If the Associate Administrator has not reached a decision on the petition for review within 30 days of receipt of the petition for review, the emergency order will cease to be effective unless the Administrator determines, in writing, that the imminent hazard providing a basis for the emergency order continues to exist.
- (m) **Time.** In computing any period of time prescribed by this section or an order or report and recommendation issued by an administrative law judge under this section, the day of filing of a petition for review or of any other act, event or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until end of the next day which is not one of the aforementioned days.

[Amdt. 190-21, 84 FR 52027, Oct. 1, 2019]

§ 190.239 Safety orders.

- (a) **When may PHMSA issue a safety order?** If the Associate Administrator finds, after notice and an opportunity for hearing under paragraph (b) of this section, that a particular pipeline facility has a condition or conditions that pose a pipeline integrity risk to public safety, property, or the environment, the

Associate Administrator may issue an order requiring the operator of the facility to take necessary corrective action. Such action may include physical inspection, testing, repair or other appropriate action to remedy the identified risk condition.

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

- (1) **Notice of proposed safety order.** PHMSA will serve written notice of a proposed safety order under § 190.5 to an operator of the pipeline facility. The notice will allege the existence of a condition that poses a pipeline integrity risk to public safety, property, or the environment, and state the facts and circumstances that support issuing a safety order for the specified pipeline or portion thereof. The notice will also specify proposed testing, evaluations, integrity assessment, or other actions to be taken by the operator and may propose that the operator submit a work plan and schedule to address the conditions identified in the notice. The notice will also provide the operator with its response options, including procedures for requesting informal consultation and a hearing. An operator receiving a notice will have 30 days to respond to the PHMSA official who issued the notice.
- (2) **Informal consultation.** Upon timely request by the operator, PHMSA will provide an opportunity for informal consultation concerning the proposed safety order. Such informal consultation shall commence within 30 days, provided that PHMSA may extend this time by request or otherwise for good cause. Informal consultation provides an opportunity for the respondent to explain the circumstances associated with the risk condition(s) identified in the notice and, where appropriate, to present a proposal for corrective action, without prejudice to the operator's position in any subsequent hearing. If the respondent and Regional Director agree within 30 days of the informal consultation on a plan for the operator to address each risk condition, they may enter into a written consent agreement and the Associate Administrator may issue a consent order incorporating the terms of the agreement. If a consent agreement is reached, no further hearing will be provided in the matter and any pending hearing request will be considered withdrawn. If a consent agreement is not reached within 30 days of the informal consultation (or if informal consultation is not requested), the Associate Administrator may proceed under paragraphs (b)(3) through (5) of this section. If PHMSA subsequently determines that an operator has failed to comply with the terms of a consent order, PHMSA may obtain any administrative or judicial remedies available under 49 U.S.C. 60101 *et seq.* and this part. If a consent agreement is not reached, any admissions made by the operator during the informal consultation shall be excluded from the record in any subsequent hearing. Nothing in this paragraph (b) precludes PHMSA from terminating the informal consultation process if it has reason to believe that the operator is not engaging in good faith discussions or otherwise concludes that further consultation would not be productive or in the public interest.
- (3) **Hearing.** An operator receiving a notice of proposed safety order may contest the notice, or any portion thereof, by filing a written request for a hearing within 30 days following receipt of the notice or within 10 days following the conclusion of informal consultation that did not result in a consent agreement, as applicable. In the absence of a timely request for a hearing, the Associate Administrator may issue a safety order in the form of the proposed order in accordance with paragraphs (c) through (g) of this section.
- (4) **Conduct of hearing.** An attorney from the Office of Chief Counsel, will serve as the Presiding Official in a hearing under this section. The hearing will be conducted informally, without strict adherence to formal rules of evidence in accordance with § 190.211. The respondent may submit any relevant information or materials, call witnesses, and present arguments on the issue of whether a safety order should be issued to address the alleged presence of a condition that poses a pipeline integrity risk to public safety, property, or the environment.

- (5) **Post-hearing action.** Following a hearing under this section, the Presiding Official will submit a recommendation to the Associate Administrator concerning issuance of a final safety order. Upon receipt of the recommendation, the Associate Administrator may proceed under paragraphs (c) through (g) of this section. If the Associate Administrator finds the facility to have a condition that poses a pipeline integrity risk to public safety, property, or the environment, the Associate Administrator will issue a safety order under this section. If the Associate Administrator does not find that the facility has such a condition, or concludes that a safety order is otherwise not warranted, the Associate Administrator will withdraw the notice and promptly notify the operator in writing by service as prescribed in § 190.5. Nothing in this subsection precludes PHMSA and the operator from entering into a consent agreement at any time before a safety order is issued.
- (6) **Termination of safety order.** Once all remedial actions set forth in the safety order and associated work plans are completed, as determined by PHMSA, the Associate Administrator will notify the operator that the safety order has been lifted. The Associate Administrator shall suspend or terminate a safety order whenever the Associate Administrator determines that the pipeline facility no longer has a condition or conditions that pose a pipeline integrity risk to public safety, property, or the environment.

(c) **How is the determination made that a pipeline facility has a condition that poses an integrity risk?** The Associate Administrator may find a pipeline facility to have a condition that poses a pipeline integrity risk to public safety, property, or the environment under paragraph (a) of this section:

- (1) If under the facts and circumstances the Associate Administrator determines the particular facility has such a condition; or
- (2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique with a history of being susceptible to failure when used in pipeline service, unless the operator involved demonstrates that such equipment, material, or technique is not susceptible to failure given the manner it is being used for a particular facility.

(d) **What factors must PHMSA consider in making a determination that a risk condition is present?** In making a determination under paragraph (c) of this section, the Associate Administrator shall consider, if relevant:

- (1) The characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction or assembly;
- (2) The nature of the materials transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such materials are transported, and the pressure required for such transportation;
- (3) The characteristics of the geographical areas where the pipeline facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas;
- (4) For hazardous liquid pipelines, the proximity of the pipeline to an unusually sensitive area;
- (5) The population density and growth patterns of the area in which the pipeline facility is located;
- (6) Any relevant recommendation of the National Transportation Safety Board issued in connection with any investigation conducted by the Board;
- (7) The likelihood that the condition will impair the serviceability of the pipeline;
- (8) The likelihood that the condition will worsen over time; and

- (9) The likelihood that the condition is present or could develop on other areas of the pipeline.
- (e) **What information will be included in a safety order?** A safety order shall contain the following:
 - (1) A finding that the pipeline facility has a condition that poses a pipeline integrity risk to public safety, property, or the environment;
 - (2) The relevant facts which form the basis of that finding;
 - (3) The legal basis for the order;
 - (4) The nature and description of any particular corrective actions to be required of the operator; and
 - (5) The date(s) by which the required corrective actions must be taken or completed and, where appropriate, the duration of the order.
- (f) **Can PHMSA take other enforcement actions on the affected facilities?** Nothing in this section precludes PHMSA from issuing a Notice of Probable Violation under § 190.207 or taking other enforcement action if noncompliance is identified at the facilities that are the subject of a safety order proceeding.
- (g) **May I petition for reconsideration of a safety order?** Yes, a petition for reconsideration may be submitted in accordance with § 190.243.

[73 FR 16567, Mar. 28, 2008, as amended at 74 FR 2893, Jan. 16, 2009; Amdt. 190-16, 78 FR 58913, Sept. 25, 2013]

§ 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.

[Amdt. 190-16, 78 FR 58913, Sept. 25, 2013]

§ 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, DC 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.

[Amdt. 190-16, 78 FR 58913, Sept. 25, 2013]