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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

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

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

Subpart A General

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

Subpart A—General

§ 190.1 Purpose and scope.

- (a) This part prescribes procedures used by the Pipeline and Hazardous Materials Safety Administration in carrying out duties regarding pipeline safety under 49 U.S.C. 60101 *et seq.* (the pipeline safety laws) and 33 U.S.C. 1321 (the water pollution control laws).
- (b) This subpart defines certain terms and prescribes procedures that are applicable to each proceeding described in this part.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18512, Apr. 26, 1996; 70 FR 11137, Mar. 8, 2005; Amdt. 190-16, 78 FR 58908, Sept. 25, 2013]

§ 190.3 Definitions.

As used in this part:

Administrator means the Administrator, Pipeline and Hazardous Materials Safety Administration or his or her delegate.

Associate Administrator means the Associate Administrator for Pipeline Safety, or his or her delegate.

Chief Counsel means the Chief Counsel of PHMSA.

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

Emergency order means a written order issued in response to an imminent hazard imposing restrictions, prohibitions, or safety measures on owners and operators of gas or hazardous liquid pipeline facilities, without prior notice or an opportunity for a hearing.

Formal hearing means a formal review in accordance with 5 U.S.C. 554, conducted by an administrative law judge.

Hearing means an informal conference or a proceeding for oral presentation. Unless otherwise specifically prescribed in this part, the use of “hearing” is not intended to require a hearing on the record in accordance with section 554 of title 5, U.S.C.

Imminent hazard means the existence of a condition relating to a gas or hazardous liquid pipeline facility that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of such death, illness, injury or endangerment.

New and novel technologies means any products, designs, materials, testing, construction, inspection, or operational procedures that are not addressed in 49 CFR parts 192, 193, or 195, due to technology or design advances and innovation for new construction. Technologies that are addressed in consensus standards that are incorporated by reference into parts 192, 193, and 195 are not “new or novel technologies.”

OPS means the Office of Pipeline Safety, which is part of the Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation.

Operator means any owner or operator.

Person means any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

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

Regional Director means the head of any one of the Regional Offices of the Office of Pipeline Safety, or a designee appointed by the Regional Director. Regional Offices are located in Trenton, NJ (Eastern Region); Atlanta, Georgia (Southern Region); Kansas City, Missouri (Central Region); Houston, Texas (Southwest Region); and Lakewood, Colorado (Western Region).

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

PHMSA means the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation.

State means a State of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

[Amdt. 190-6, 61 FR 18513, Apr. 26, 1996, as amended at 68 FR 11749, Mar. 12, 2003; 70 FR 11137, Mar. 8, 2005; Amdt. 190-15, 74 FR 62505, Nov. 30, 2009; Amdt. 190-16, 78 FR 58908, Sept. 25, 2013; Amdt. 190-18, 81 FR 70985, Oct. 14, 2016; Amdt. 190-19, 82 FR 7995, Jan. 23, 2017; Amdt. 190-21, 84 FR 52026, Oct. 1, 2019]

§ 190.5 Service.

- (a) Each order, notice, or other document required to be served under this part, will be served personally, by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt.
- (b) Service upon a person's duly authorized representative or agent constitutes service upon that person.
- (c) Service by certified mail or overnight courier is complete upon mailing. Service by electronic transmission is complete upon transmission and acknowledgement of receipt. An official receipt for the mailing from the U.S. Postal Service or overnight courier, or a facsimile or other electronic transmission confirmation, constitutes prima facie evidence of service.

[45 FR 20413, Mar. 27, 1980, as amended at 73 FR 16567, Mar. 28, 2008; Amdt. 190-16, 78 FR 58909, Sept. 25, 2013; Amdt. 190-18, 81 FR 70985, Oct. 14, 2016; Amdt. 190-21, 84 FR 52026, Oct. 1, 2019]

§ 190.7 Subpoenas; witness fees.

- (a) The Administrator, Chief Counsel, or the official designated by the Administrator to preside over a hearing convened in accordance with this part, may sign and issue subpoenas individually on his or her own initiative at any time, including pursuant to an inspection or investigation, or upon request and adequate showing by a participant to an enforcement proceeding that the information sought will materially advance the proceeding.
- (b) A subpoena may require the attendance of a witness, or the production of documentary or other tangible evidence in the possession or under the control of person served, or both.
- (c) A subpoena may be served personally by any person who is not an interested person and is not less than 18 years of age, or by certified mail.
- (d) Service of a subpoena upon the person named in the subpoena is achieved by delivering a copy of the subpoena to the person and by paying the fees for one day's attendance and mileage, as specified by paragraph (g) of this section. When a subpoena is issued at the instance of any officer or agency of the United States, fees and mileage need not be tendered at the time of service. Delivery of a copy of a subpoena and tender of the fees to a natural person may be made by handing them to the person, leaving them at the person's office with a person in charge, leaving them at the person's residence with a person of suitable age and discretion residing there, by mailing them by certified mail to the person at the last known address, or by any method whereby actual notice is given to the person and the fees are made available prior to the return date.
- (e) When the person to be served is not a natural person, delivery of a copy of the subpoena and tender of the fees may be achieved by handing them to a designated agent or representative for service, or to any officer, director, or agent in charge of any office of the person, or by mailing them by certified mail to that agent or representative and the fees are made available prior to the return date.
- (f) The original subpoena bearing a certificate of service shall be filed with the official having responsibility for the proceeding in connection with which the subpoena was issued.
- (g) A subpoenaed witness shall be paid the same fees and mileage as would be paid to a witness in a proceeding in the district courts of the United States. The witness fees and mileage shall be paid by the person at whose instance the subpoena was issued.

- (h) Notwithstanding the provisions of paragraph (g) of this section, and upon request, the witness fees and mileage may be paid by the PHMSA if the official who issued the subpoena determines on the basis of good cause shown, that:
 - (1) The presence of the subpoenaed witness will materially advance the proceeding; and
 - (2) The person at whose instance the subpoena was issued would suffer a serious hardship if required to pay the witness fees and mileage.
- (i) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the official who issued the subpoena, or if the person is unavailable, to the Administrator to quash or modify the subpoena. The application shall contain a brief statement of the reasons relied upon in support of the action sought therein. The Administrator, or this issuing official, as the case may be, may:
 - (1) Deny the application;
 - (2) Quash or modify the subpoena; or
 - (3) Condition a grant or denial of the application to quash or modify the subpoena upon the satisfaction of certain just and reasonable requirements. The denial may be summary.
- (j) Upon refusal to obey a subpoena served upon any person under the provisions of this section, the PHMSA may request the Attorney General to seek the aid of the U. S. District Court for any District in which the person is found to compel that person, after notice, to appear and give testimony, or to appear and produce the subpoenaed documents before the PHMSA, or both.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18513, Apr. 26, 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]

§ 190.9 Petitions for finding or approval.

- (a) In circumstances where a rule contained in parts 192, 193 and 195 of this chapter authorizes the Administrator to make a finding or approval, an operator may petition the Administrator for such a finding or approval.
- (b) Each petition must refer to the rule authorizing the action sought and contain information or arguments that justify the action. Unless otherwise specified, no public proceeding is held on a petition before it is granted or denied. After a petition is received, the Administrator or participating state agency notifies the petitioner of the disposition of the petition or, if the request requires more extensive consideration or additional information or comments are requested and delay is expected, of the date by which action will be taken.
 - (1) For operators seeking a finding or approval involving intrastate pipeline transportation, petitions must be sent to:
 - (i) The State agency certified to participate under 49 U.S.C. 60105.
 - (ii) Where there is no state agency certified to participate, the Administrator, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590.

- (2) For operators seeking a finding or approval involving interstate pipeline transportation, petitions must be sent to the Administrator, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- (c) All petitions must be received at least 90 days prior to the date by which the operator requests the finding or approval to be made.
- (d) The Administrator will make all findings or approvals of petitions initiated under this section. A participating state agency receiving petitions initiated under this section shall provide the Administrator a written recommendation as to the disposition of any petition received by them. Where the Administrator does not reverse or modify a recommendation made by a state agency within 10 business days of its receipt, the recommended disposition shall constitute the Administrator's decision on the petition.

[Amdt. 190-5, 59 FR 17280, Apr. 12, 1994, as amended by Amdt. 190-6, 61 FR 18513, Apr. 26, 1996; 70 FR 11137, Mar. 8, 2005; 73 FR 16566, Mar. 28, 2008]

§ 190.11 Availability of informal guidance and interpretive assistance.

- (a) **Availability of telephonic and Internet assistance.** PHMSA has established a Web site and a telephone line to OPS headquarters where information on and advice about compliance with the pipeline safety regulations specified in 49 CFR parts 190-199 is available. The Web site and telephone line are staffed by personnel from PHMSA's OPS from 9:00 a.m. through 5:00 p.m., Eastern Time, Monday through Friday, with the exception of Federal holidays. When the lines are not staffed, individuals may leave a recorded voicemail message or post a message on the OPS Web site. The telephone number for the OPS information line is (202) 366-4595 and the OPS Web site can be accessed via the Internet at <http://phmsa.dot.gov/pipeline>.
- (b) **Availability of written interpretations.** A written regulatory interpretation, response to a question, or an opinion concerning a pipeline safety issue may be obtained by submitting a written request to the Office of Pipeline Safety (PHP-30), PHMSA, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. The requestor must include his or her return address and should also include a daytime telephone number. Written requests should be submitted at least 120 days before the time the requestor needs a response.

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