

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 190**

(MTB Docket No. 3)

Pipeline Safety Enforcement Procedures**AGENCY:** Materials Transportation Bureau (MTB), DOT.**ACTION:** Final rule.

SUMMARY: This document adds a new Part 190 to Title 49, Code of Federal Regulations that prescribes procedures to be followed by the MTB in carrying out its enforcement responsibilities under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 *et seq.*) (NGPSA), as amended, and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (Title II of Pub. L. 96-129, November 30, 1979). Beyond assuring compliance with the terms of those Acts, the procedures in new Part 190 will be followed in enforcing the Federal pipeline safety regulations contained in Parts 191, 192, 193, and 195. Additionally, several general procedures are prescribed for the service of documents and subpoenas.

EFFECTIVE DATE: March 27, 1980.

FOR FURTHER INFORMATION CONTACT: Paul Biancardi, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590 (202) 755-4972.

SUPPLEMENTARY INFORMATION:**Subpart A—General Provisions**

Section 190.3 defines the NGPSA and the HLPSA and reflects the inclusion in Part 190 of new authority available to the MTB as a result of enactment of the Pipeline Safety Act of 1979 (Pub. L. 96-129, November 30, 1979). Reference is also made in this part to the Hazardous Materials Transportation Act of 1974 (HMTA) to reflect MTB's intention to follow the Part 190 procedures in enforcing pipeline safety regulations adopted on the authority of the HMTA, i.e. Part 192 regulations as they apply to "offshore gas gathering lines". The section also sets forth the relationship of the enforcement office within the Materials Transportation Bureau (MTB) to the RSPA, reflecting the redelegation of enforcement responsibility to the Office of Operations and Enforcement (OOE). Section 190.3 also defines "hearing" in order to clarify the nature of the adjudicatory forum in which

persons subject to Part 190 proceedings may participate.

Section 190.5 prescribes the means for effecting service of documents, notices of violations, and orders upon persons subject to enforcement proceedings.

Section 190.7 specifies who has authority to issue subpoenas for the purpose of carrying out MTB's enforcement responsibilities. It also prescribes the method of service and payment of witness fees.

Subpart B—Enforcement.

Subpart B of new Part 190 describes the investigative procedures and enforcement authorities exercised by OOE for the purpose of assuring compliance with the Federal pipeline safety regulations. It also prescribes procedures governing OOE's imposition of sanctions with respect to violations of those regulations.

Section 190.203 describes the manner and policy in which the OOE conducts its inspections of pipeline facilities and reflects the regional inspection method currently employed by the OOE's field investigation program.

Section 190.205 provides for the issuance of warning letters as a means of seeking corrective action to alleged violations of law or regulation. Such warning letters are an alternative to immediately commencing formal enforcement proceedings under §§ 190.215 through 190.235.

The two primary enforcement sanctions available to MTB are compliance orders and civil penalties. The first involves issuance of an order mandating necessary compliance with law or regulation. The second involves assessing a civil penalty for violation of such law or regulation. Procedures governing the processing of these individual enforcement actions are covered in §§ 190.207 through 190.213. To impose either a civil penalty or a compliance order, the OOE must follow the procedures outlined in § 190.207, "Notice of Probable Violation", § 190.209, "Response Options", § 190.211, "Hearing", and § 190.213, "Final Order". Each of these sections prescribes the adjudicatory process by which a sanction, whether civil penalty or compliance order, may be imposed against persons subject to the pipeline safety regulations.

The compliance order and civil penalty procedures are similar. Both are initiated by the issuance of a notice of probable violation with the respondent having 30 days in which to reply. Both provide the respondent with an opportunity to present a rebuttal to the allegations, in writing or orally, or a combination of both. They also provide

means for settlement through informal compromise. In addition, both provide the respondent with options as to the degree of formality with which the matter is to be processed.

Under separate headings, the remainder of Subpart B (§§ 190.215 to 190.233) describes the various enforcement sanctions available to the OOE. The four types of enforcement sanctions include the already mentioned compliance orders and civil penalties as well as criminal penalties and injunctive actions.

Section 190.215 provides a method of administrative review of a final order issued under § 190.213, by allowing a petition for reconsideration of the findings made in a final order. In compliance order cases, a compromise is possible by negotiation between the OOE and the respondent of a consent order under § 190.219.

Section 190.223 describes the statutory civil penalty liability to which a respondent may be exposed when violations are proved. Section 190.225 lists the statutory criteria which are considered in assessing such a civil penalty. Section 190.227 prescribes the method of payment of civil penalties whether by compromise or assessment in a final order.

Section 190.229 reflects the criminal penalty provided for in the NGPSA, HMTA, and the HLPSA. Section 190.231 describes the procedures followed by the OOE, the MTB and the RSPA with respect to possible criminal violations.

Hazardous Facility Orders

In addition to sanctions available for violations of the NGPSA, HLPSA, HMTA or regulations or orders issued under any of those Acts the OOE may issue orders directing specific action by the respondent in the absence of any violations, if OOE finds that a pipeline facility is hazardous to life or property. Section 190.233 under SPECIFIC RELIEF, implements and largely repeats statutory language contained in both the NGPSA and the HLPSA. Adjudicatory procedures similar to those contained in §§ 190.207 through 190.213, apply to such orders. However, in the case of hazardous facility orders, OOE may waive the hearing requirement when it determines that failure to do so would result in the likelihood of serious harm to life or property but must provide the respondent the opportunity for a hearing as soon as practicable after issuance of the order.

Since these rules relate to practice and procedures of the RSPA, MTB and OOE, notice and public procedure thereon is not necessary. However, because the RSPA contemplates a

review of these procedures after they have been in operation for at least six months, and since it is desirous of public participation in that review, interested persons are invited to submit such comments as they desire. All comments received before the close of business on September 30, 1980, will be considered during the review and will be available in the Office of the Chief Counsel, both before and after that date.

In consideration of the foregoing, 49 CFR Subchapter D is amended by adding a new Part 190, reading as follows:

PART 190—PIPELINE SAFETY PROGRAM PROCEDURES

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Authority: 49 U.S.C. 1672, 1677, 1679, 1679b, 1680, 1681; 49 U.S.C. 2002, 2006, 2007, 2008, 2009, 2010; sections applicable to offshore gas gathering lines also issued under 49 U.S.C. 1804; 59 CFR 1.53 and Appendix A to Part I.

Subpart A—General

§ 190.1 Purpose and scope.

(a) This part prescribes procedures utilized by the Materials Transportation Bureau and the Office of Operations and Enforcement in carrying out their duties regarding pipeline safety under the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 *et seq.*), the Hazardous Liquid Pipeline Safety Act of 1979 (Title II of Pub. L. 96-129 November 30, 1979), and the Hazardous Materials

Transportation Act, as amended (49 U.S.C. 1801 *et seq.*).

(b) This subpart defines certain terms and prescribes procedures that are applicable to each proceeding described in this Part.

§ 190.3 Definitions.

As used in this part:

(a) "The NGPSA" means the Natural Gas Pipeline Safety Act of 1968, as amended 49 U.S.C. 1671 *et seq.* The regulations prescribed in this part and Parts 191, 192 and 193 of Subchapter D are issued under the authority of the NGPSA.

(b) "The HLPESA" means the Hazardous Liquid Pipeline Safety Act of 1979 (Title II of Pub. L. 96-129). The regulations prescribed in this part and Part 195 of Subchapter D are issued under the authority of the HLPESA.

(c) The "HMTA" means the Hazardous Materials Transportation Act of 1974 (49 U.S.C. 1801 *et seq.*). The regulations prescribed in this part and Part 192 as they apply to "offshore gas gathering lines" are issued under the HMTA.

(d) "MTB" means the Materials Transportation Bureau which is part of the Research and Special Programs Administration, U.S. Department of Transportation.

(e) "OOE" means the Office of Operations and Enforcement, which is part of the Materials Transportation Bureau, Research and Special Programs Administration, U.S. Department of Transportation.

(f) "Region Chief" means the Chief or his designee of any one of the Regional Offices of the Office of Operations and Enforcement. Regional Offices are located in Washington, D.C. (Eastern Region); Atlanta, Georgia (Southern Region); Kansas City, Missouri (Central Region); Houston, Texas (Southwest Region); and Burlingame, California (Western Region).

(g) "Presiding Official" means the person who conducts any hearing relating to civil penalty assessments, compliance orders or hazardous facility orders.

(h) "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.

(i) "Respondent" means a person upon whom the OOE has served a notice of probable violation.

(j) "State" means a State of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(k) "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, United States Code.

§ 190.5 Service.

(a) Each order, notice, or other document required to be served under this part shall be served personally or by registered or certified mail.

(b) Service upon a person's duly authorized representative or agent constitutes service upon that person.

(c) Service by registered or certified mail is complete upon mailing. An official United States Postal Service receipt from the registered or certified mailing constitutes prima facie evidence of service.

§ 190.7 Subpoenas; witness fees.

(a) The Director, MTB, the Chief Counsel, Research and Special Programs Administration, or the official designated by the Director, MTB to preside over a hearing convened in accordance with this part, may sign and issue subpoenas either on his own initiative or, upon request and adequate showing by any person participating in the 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 or registered mail.

(d) Service of a subpoena upon the person named therein shall be made by delivering a copy of the subpoena to such person and by tendering 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 his office with the person in charge thereof, leaving them at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, by mailing them by registered or certified mail to him at his last known address, or by any method whereby

actual notice is given to him 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 effected 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 registered or 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 MTB 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 he is unavailable, to the Director, MTB, 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 Director, MTB, 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 MTB may request the Attorney General to seek the aid of the United States 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 MTB; or both.

Subpart B—Enforcement

§ 190.201 Purpose and scope.

(a) This subpart describes the enforcement authority and sanctions exercised by the OOE for achieving and maintaining pipeline safety. 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.

§ 190.203 Inspections.

(a) Officers, employees, or agents authorized by the Associate Director, OOE, 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 HLPsa, NGPSA, HMTA or regulations, or orders issued thereunder.

(b) Inspections are ordinarily conducted pursuant to one of the following:

(1) Routine scheduling by the Chief 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 section 5 of the NGPSA or section 205 of the HLPsa;

(5) Pipeline accident or incident; or

(6) Whenever deemed appropriate by the Director, MTB or his designee.

(c) If, after an inspection, the OOE believes that further information is needed to determine appropriate action, OOE may send the owner or operator a "Request for Specific Information" to be answered within 30 days after receipt of the letter.

(d) To the extent necessary to carry out his responsibilities under the HLPsa, HMTA or the NGPSA, the Director, MTB may require testing of portions of pipeline facilities subject to those Acts which have been involved in or affected by an accident. However, before exercising such authority, the Director, MTB shall make every effort to negotiate a mutually acceptable plan with the owner of such facilities and, where appropriate, the National Transportation Safety Board for performing such testing.

(e) When the information obtained from an inspection or from other appropriate sources indicates that further OOE action is warranted, the OOE issues a warning letter under § 190.205 or initiates one or more of the enforcement proceedings prescribed in §§ 190.207 through 190.235.

§ 190.205 Warning letters.

Upon determining that a probable violation of the NGPSA, HLPsa, or HMTA or any regulation or order issued under any of those Acts has occurred, the OOE may issue a Warning Letter notifying the owner or operator of the probable violation and advising him to correct it or be subject to enforcement action under §§ 190.207 through 190.235.

§ 190.207 Notice of probable violation.

(a) Except as otherwise provided by this subpart, a Region Chief begins an enforcement proceeding by serving a notice of probable violation on a person charging him with a probable violation of the NGPSA, HLPsa, or HMTA 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 § 190.209;

(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) OOE 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 or proposes an increased civil penalty amount or new or additional remedial action under § 190.217, the respondent shall have the opportunity to respond under § 190.209.

§ 190.209 Response options.

Within 30 days of his receipt of a notice of probable violation the respondent shall respond to the Region Chief who issued the Notice in the following way:

(a) When the notice contains a proposed civil penalty—

(1) Pay the proposed civil penalty as provided in § 190.227 and close the case;

(2) Submit an offer in compromise of the proposed civil penalty under

paragraph (c) of this section and paragraph (a) of § 190.227;

(3) Submit written explanations, information or other materials in answer to the allegations or in mitigation of the proposed civil penalty; or

(4) Request a hearing under § 190.211.

(b) When the notice contains a proposed compliance order—

(1) Agree to the proposed compliance order;

(2) Request the execution of a consent order under § 190.219;

(3) 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) Request a hearing under § 190.211.

(c) An offer in compromise under paragraph (a) of this section is made by submitting a check or money order for the amount offered to the Region Chief who forwards the offer to the Associate Director, OOE, for action. If the offer in compromise is accepted by the Associate Director, OOE, the respondent is notified in writing that the acceptance is in full settlement of the civil penalty action. If an offer in compromise submitted under paragraph (a) of this section is rejected by OOE, it is returned to the respondent with written notification. Within 10 days of his receipt of such notification, the respondent shall again respond to the Region Chief in one or more of the ways provided in paragraph (a) of this section.

(d) Failure of the respondent to respond in accordance with paragraph (a) of this section or, when applicable, paragraph (c) of this section, constitutes a waiver of his right to contest the allegations in the notice of probable violation and authorizes the Associate Director, OOE, without further notice to the respondent, to find facts to be as alleged in the notice of probable violation and to issue a final order under § 190.213.

§ 190.211 Hearing.

(a) A request for a hearing in response to a notice of probable violation issued under § 190.207 must be accompanied by a statement of the issues which the respondent intends to raise at the hearing. The issues may relate to the alleged violations, new information or to the proposed compliance order or proposed civil penalty amount. A respondent's failure to specify an issue may result in waiver of his right to raise that issue at the hearing. The respondent's request must also indicate whether or not he will be represented by counsel at the hearing.

(b) In such circumstances as deemed appropriate by the Region Chief, and

only if the respondent concurs, a telephone conference may be held in lieu of a hearing.

(c) If the respondent contests any of the alleged violations, if the respondent is represented by counsel or if the respondent specifically requests that an attorney conduct the hearing, an attorney from the Office of the Chief Counsel, Research and Special Programs Administration, serves as the presiding official at the hearing. Otherwise, the hearing may be conducted by a representative of the OOE Region in which the facility is located.

(d) The hearing is conducted informally without strict adherence to rules of evidence. The respondent may submit any relevant information and material and call witnesses on his behalf. He also may examine the evidence and witnesses against him. No detailed record of a hearing is prepared.

(e) At the outset of the hearing, the material in the case file pertinent to the issues to be determined is presented by the presiding official. The respondent may examine and respond to or rebut this material.

(f) After the presentation of the material in the case file, the respondent may offer any facts, statements, explanations, documents, testimony or other items which are relevant to the issues under consideration.

(g) At the close of the respondent's presentation, the presiding official may present or allow the presentation of any OOE rebuttal information. The respondent may then respond to that information.

(h) After the evidence in the case has been presented, the presiding official shall permit argument on the issues under consideration.

(i) The respondent may also request an opportunity to submit further written material for inclusion in the case file. The presiding official shall allow a reasonable time for the submission of the material and shall specify the date by which it must be submitted. If the material is not submitted within the time prescribed, the case shall proceed to final action without the material.

(j) After submission of all materials during and after the hearing, the presiding official shall prepare a written recommendation as to final action in the case. This recommendation, along with any material submitted during and after the hearing, shall be included in the case file which is forwarded to the Associate Director, OOE, for final administrative action.

§ 190.213 Final order.

(a) After a hearing under § 190.211 or, if no hearing has been held, after

expiration of the 30 day response period prescribed in § 190.209, the case file of an enforcement proceeding commenced under § 190.207 is forwarded to the Associate Director, OOE, for issuance of a final order.

(b) The case file of an enforcement proceeding commenced under § 190.207 includes—

(1) The inspection reports and any other evidence of alleged violations;

(2) A copy of the notice of probable violation issued under § 190.207;

(3) Material submitted by the respondent in accord with § 190.209 in response to the notice of probable violation;

(4) The Region Chief's evaluation of response material submitted by the respondent and his recommendation for final action to be taken under this section; and

(5) In cases involving a § 190.211 hearing, any material submitted during and after the hearing and the presiding official's recommendation for final action to be taken under this section.

(c) Based on his review of a case file described in paragraph (b) of this section, the Associate Director, OOE, shall issue a final order that 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.

(d) Except as provided by § 190.215, an order issued under this section regarding an enforcement proceeding is considered final administrative action on that enforcement proceeding.

(e) It is the policy of the Associate Director, OOE, to issue a final order under this section within 45 days of receipt of the case file, unless it is found impracticable to take action within that time. In cases where it is so found and the delay beyond that period is expected to be substantial, notice of that fact and the date by which it is expected that action will be taken is issued to the respondent.

§ 190.215 Petitions for reconsideration.

(a) A respondent may petition the Associate Director, OOE, for reconsideration of a final order issued under § 190.213. It is requested, but not required, that three copies be submitted.

The petition must be received no later than 20 days after service upon the respondent of the final order. 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 effectiveness of the final order should be stayed.

(b) If the respondent requests the consideration of additional facts or arguments he must state the reasons they were not presented prior to issuance of the final order.

(c) The Associate Director, OOE, does not consider repetitious information, arguments, or petitions.

(d) Unless the Associate Director, OOE, otherwise provides, the filing of a petition under this section does not stay the effectiveness of the final order.

(e) The Associate Director, OOE, may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event he determines to reconsider a final order, he may issue a final decision on reconsideration without further proceedings, or he may provide such opportunity to submit comment or information and data as he deems appropriate.

(f) It is the policy of the Associate Director, OOE, to issue notice of the action taken on a petition for reconsideration within 20 days after receipt of the petition, unless it is found impracticable to take action within that time. In cases where it is so found and delay beyond that period is expected to be substantial, notice of that fact and the date by which it is expected that action will be taken is issued to the respondent.

Compliance Orders

§ 190.217 Compliance orders generally.

When the OOE has reason to believe that a person is engaging in conduct which involves a violation of the NGPSA, HMTA or the HLPESA or any regulation issued under any of those Acts, and if the nature of the violation, and the public interest warrant, the OOE may conduct proceedings under §§ 190.207 through 190.213 of this part to determine the nature and extent of the violations and to issue an order directing compliance.

§ 190.219 Consent order.

(a) At any time before the issuance of a compliance order under § 190.213 the Associate Director, OOE, and the respondent may agree to dispose of the case by joint execution of a consent order. Upon such joint execution, the consent order shall be considered a final order under § 190.213.

(b) A consent order executed under subsection (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.

Civil Penalties

§ 190.221 Civil penalties generally.

When the OOE has reason to believe that a person has committed an act which is a violation of any provision of the NGPSA, HMTA or the HLPESA or any regulation or order issued under any of those Acts, it may conduct proceedings under §§ 190.207 through 190.213 to determine the nature and extent of the violations and to assess and, if appropriate, compromise a civil penalty.

§ 190.223 Maximum penalties.

(a) Any person who violates a provision of the NGPSA or the HLPESA or any regulation or order issued under either of those Acts, is subject to a civil penalty not to exceed \$1,000 for each violation for each day the violation continues except that the maximum civil penalty may not exceed \$200,000 for any related series of violations.

(b) Any person who knowingly violates a regulation or order under this subchapter applicable to offshore gas gathering lines issued under the authority of the HMTA is liable for a civil penalty of not more than \$10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense.

(c) Any person who is determined to have violated any standard or order under section 6 or 7(b) of the NGPSA shall be subject to a civil penalty of not to exceed \$50,000, which penalty shall be in addition to any other penalties to which such person may be subject under paragraph (a) of this section.

(d) No person shall be subject to a civil penalty under this section for the violation of any requirement of this subchapter and an order issued under § 190.217, § 190.219 or § 190.233 if both violations are based on the same act.

§ 190.225 Assessment considerations.

The Associate Director, OOE, assesses a civil penalty under this Part only after considering:

(a) The nature, circumstances and gravity of the violation;

(b) The degree of the respondent's culpability;

(c) The respondent's history of prior offenses;

(d) The respondent's ability to pay;

(e) Any good faith by the respondent in attempting to achieve compliance;

(f) The effect on the respondent's ability to continue in business; and

(g) Such other matters as justice may require.

§ 190.227 Payment of penalty.

(a) Payment by a respondent of a civil penalty proposed, assessed, or compromised under this subpart must be made by certified check or money order payable to the Treasury of the United States. Except as provided by § 190.209, such payment is sent to the Office of the Chief Counsel (DCC-1), Research and Special Programs Administration, Department of Transportation, Washington, D.C. 20590.

(b) If a respondent fails to pay the full amount of a civil penalty assessed in a final order issued under § 190.213 or make an offer in compromise to the assessed penalty as provided by paragraph (c) of this section within 20 days after receipt of the final order, the Chief Counsel may refer the case to the Attorney General with a request that an action to collect the assessed penalty be brought in the appropriate United States district court or the Federal magistrate court within that district to the extent permitted under 28 U.S.C. 636.

(c) Within 20 days after the respondent's receipt of a final order assessing a civil penalty issued under § 190.213, the respondent may offer to compromise the assessed penalty by submitting, in the manner required by paragraph (a) of this section, payment in the amount offered. The Chief Counsel or his designee may accept or reject the compromise offer on behalf of the Associate Director, OOE. If it is accepted, the respondent is notified in writing that the acceptance is in full settlement of the civil penalty action. If the compromise offer is rejected it will be returned to the respondent with written notification. Within 20 days after the respondent's receipt of such notification, payment of the full amount of the civil penalty assessed in the final order becomes due. The provisions of paragraph (b) of this section regarding district court or Federal magistrate court action for penalty collection apply upon failure of the respondent to pay the assessed penalty within that time period.

(d) If the respondent elects to make an offer in compromise to a civil penalty

proposed in a notice of probable violation issued under § 190.207, he shall do so in accord with the procedures of § 190.209.

Criminal Penalties

§ 190.229 Criminal penalties generally.

(a) Any person who willfully and knowingly violates a provision of the NGPSA or the HLPESA or any regulation or order issued thereunder shall upon conviction be subject for each offense to a fine of not more than \$25,000 and imprisonment for not more than five years, or both.

(b) Any person who willfully violates a regulation or order under this subchapter issued under the authority of the HMTA applicable to offshore gas gathering lines shall upon conviction be subject for each offense to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

(c) Any person who willfully and knowingly injures or destroys, or attempts to injure or destroy, any interstate transmission facility (as that term is defined in the NGPSA) or any interstate pipeline facility (as that term is defined in the HLPESA) shall, upon conviction, be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 15 years, or both.

(d) No person shall be subject to criminal penalties under paragraph (a) of this section for violation of any regulation and the violation of any order issued under § 190.217, § 190.219 or § 190.229 if both violations are based on the same act.

§ 190.231 Referral for prosecution.

If an employee of MTB becomes aware of any actual or possible activity subject to criminal penalties under § 190.229, he reports it to the Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590. The Chief Counsel refers the report to OOE for investigation. Upon completion of the investigation and if appropriate, the Chief Counsel or his designee refers the report to the Department of Justice for criminal prosecution of the offender.

Specific Relief

§ 190.233 Hazardous facility orders.

(a) Except as provided by paragraph (b) of this section, if the Associate Director, OOE, finds, after reasonable notice and opportunity for hearing in accord with paragraph (c) of this section, a particular pipeline facility to be hazardous to life or property, he shall issue an order pursuant to this section

requiring the owner or 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 action, as appropriate.

(b) The Associate Director, OOE, may waive the requirement for notice and hearing under paragraph (a) of this section before issuing an order pursuant to this section when he determines that the failure to do so would result in the likelihood of serious harm to life or property. However, he shall include in the order an opportunity for hearing as soon as practicable after issuance of the order. The provisions of paragraph (c)(2) of this section apply to an owner or operator's decision to exercise such an opportunity for hearing. The purpose of such a post-order hearing is for the Associate Director, OOE, to determine whether the order should remain in effect or be rescinded or suspended in accord with paragraph (g) of this section.

(c) Notice and hearing:

(1) Written notice that OOE intends to issue an order under this section shall be served in accordance with § 190.5, upon the owner or operator of an alleged hazardous facility. The notice shall allege the existence of a hazardous facility, stating the facts and circumstances supporting the issuance of a "hazardous facility order", and providing the owner or operator an opportunity for a hearing, identifying the time and location of the hearing.

(2) An owner or operator elects to exercise his opportunity for a hearing under this section, by notifying the OOE of that election in writing within 10 days of service of the notice provided under paragraph (c)(1) of this section or when applicable, under paragraph (b) of this section.

Absence of such written notification waives an owner or operator's opportunity for a hearing and allows the Associate Director, OOE, to proceed to issue a "hazardous facility order" in accordance with paragraphs (d) through (h) of this section.

(3) A hearing under this section shall be presided over by an attorney from the Office of Chief Counsel, Research and Special Programs Administration, acting as Presiding Official, and conducted without strict adherence to rules of evidence. The Presiding Official presents the allegations contained in the notice issued under this section. The owner or operator of the alleged hazardous facility may submit any relevant information or materials, call witnesses and present arguments on the

issue of whether or not a "hazardous facility order" should be issued.

(4) Within 48 hours after conclusion of a hearing under this section, the Presiding Official shall submit a recommendation to the Associate Director, OOE, as to whether or not a "hazardous facility order" is required. Upon receipt of the recommendation, the Associate Director, OOE, shall proceed in accordance with paragraphs (d) through (h) of this section. If the Associate Director, OOE, finds the facility to be hazardous to life or property he shall issue an order in accordance with this section. If he does not find the facility to be hazardous to life or property, the Associate Director, OOE, shall dismiss the allegations contained in the notice, and promptly notify the owner or operator in writing by service as prescribed in § 190.5.

(d) The Associate Director, OOE, may find a pipeline facility to be hazardous under paragraph (a) of this section—

(1) If under the facts and circumstances he determines the particular facility is hazardous to life or property; or

(2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which he determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the OOE that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous to life or property.

(e) In making a determination under paragraph (d), the Associate Director, OOE, 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 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 aspects of the 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 Director, OOE, may consider appropriate.

(f) The order shall contain the following information:

(1) A finding that the pipeline facility is hazardous to life or property.

(2) The relevant facts which form the basis for that finding.

(3) The legal basis for the order.

(4) The nature and description of particular corrective action required of the respondent.

(5) The date by which the required action must be taken, or completed and, where appropriate, the duration of the order.

(6) If a hearing has been waived pursuant to paragraph (b), a statement that an opportunity for a hearing is provided at a particular location and at a certain time after issuance of the order.

(g) The Associate Director, OOE, shall rescind or suspend a "hazardous facility order" whenever he determines that the facility is no longer hazardous to life or property. When appropriate, however, such a rescission or suspension may be accompanied by a notice of probable violation issued under § 190.207.

(h) At any time after an order issued under this section has become effective, the Associate Director, OOE, 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.

§ 190.235 Injunctive action.

Whenever it appears to OOE that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of the NGPSA, the HLPFA or the HMTA, or any regulations issued under any of those Acts, the Director, MTB, or his delegate, may request the Attorney General to bring an action in the appropriate United States District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages as provided by section 12(a) of the NGPSA, section 209(a) of the HLPFA, and section 111(a) of the HMTA.

Issued in Washington, D.C., March 19, 1980.

L. D. Santman,

Director, Materials Transportation Bureau.