



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

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To: Linda Daugherty, Acting Associate Administrator for Pipeline Safety, PHMSA

Subject: Policy for Calculating Proposed Civil Penalties in Pipeline Safety Enforcement Proceedings¹

SUMMARY

The Office of the Chief Counsel (PHC) is advising the Office of Pipeline Safety (OPS) to revise its policy for calculating proposed civil penalties in pipeline safety enforcement proceedings. Under the current policy, OPS calculates proposed civil penalty amounts using the version of the Civil Penalty Worksheet in effect on the date when a proceeding is initiated, rather than the version in effect on the date when an alleged violation occurred. OPS follows that policy even in cases where use of the version in effect on the date when an alleged violation occurred would result in the calculation of a lower proposed civil penalty amount.

To ensure that the Pipeline and Hazardous Materials Safety Administration (PHMSA) is assessing civil penalties in a manner that is fair and consistent with applicable procedural requirements, PHC is advising OPS to use the version of the Civil Penalty Worksheet in effect on the date when an alleged violation occurred. PHC is advising OPS to apply this new policy in all cases that are currently pending before PHMSA and in all future proceedings. PHC is not advising OPS to apply this new policy retroactively to prior cases that were already the subject of a final administrative action. Nor is PHC advising OPS that its prior practice for calculating proposed civil penalties in pipeline safety enforcement proceedings violated any applicable law, statute, or regulation.

BACKGROUND

The Pipeline Safety Act authorizes PHMSA to assess civil penalties against any “person” that “has violated” certain statutory provisions “or a regulation prescribed or order issued under” the

¹ This memorandum is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

authority provided in Chapter 601 of Title 49 of the United States Code. 49 U.S.C. § 60122(a)(1). PHMSA is required to consider certain factors “[i]n determining the amount of a civil penalty” that should be assessed in such proceedings, including:

- (A) the nature, circumstances, and gravity of the violation, including adverse impact on the environment;
- (B) with respect to the violator, the degree of culpability, any history of prior violations, and any effect on ability to continue doing business;
- (C) good faith in attempting to comply; and
- (D) self-disclosure and correction of violations, or actions to correct a violation, prior to discovery by [PHMSA]

49 U.S.C. § 60122(b)(1); *see also* 49 CFR § 190.225(a) (codifying mandatory civil penalty assessment considerations). PHMSA may also consider “the economic benefit gained from the violation without any reduction because of subsequent damages . . . and . . . other matters that justice requires” in determining the amount of a civil penalty assessment. 49 U.S.C. § 60122(b); *see also* 49 CFR § 190.225(b) (codifying discretionary civil penalty assessment considerations).

OPS is the entity within PHMSA that conducts inspections and investigations and initiates administrative enforcement actions for alleged violations of the Pipeline Safety Act, 49 U.S.C. §§ 60101–60143, Federal Pipeline Safety Regulations, 49 CFR Parts 190–99, and orders issued pursuant to the authority provided thereunder. OPS must comply with certain procedural requirements in performing these functions, including in cases that involve the assessment of a civil penalty. The person who is the subject of the OPS inspection or investigation, or the respondent in an enforcement action, is also afforded certain procedural protections. 49 U.S.C. § 60117(b)(1); 49 CFR Part 190, Subpart B; OFFICE OF THE GEN. COUNSEL, U.S. DEP’T OF TRANSP., MEMORANDUM TO SECRETARIAL OFFICERS AND HEADS OF OPERATING ADMINISTRATIONS: PROCEDURAL REQUIREMENTS FOR DOT ENFORCEMENT ACTIONS 4–11 (Mar. 11, 2025), <https://www.transportation.gov/administrations/office-general-counsel/general-counsel%E2%80%99s-enforcement-memorandum> (DOT Enforcement Memo); *see also* *Goldberg v. Kelly*, 397 U.S. 254, 266–71 (1970); *Richardson v. Perales*, 402 U.S. 389, 402–10 (1971); *Mathews v. Eldridge*, 424 U.S. 319, 332–34, (1976); *Brock v. Roadway Exp., Inc.*, 481 U.S. 252, 261 (1987).

To improve the effectiveness of PHMSA’s pipeline safety enforcement program, OPS has developed a three-step process for determining the amount of a civil penalty that should be proposed for alleged violations at the outset of a proceeding. *See* Pipeline Safety: General Policy Statement; Civil Penalties, 81 Fed. Reg. 71,566 (Oct. 17, 2016); U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-04-985T, PIPELINE SAFETY: PRELIMINARY INFORMATION ON THE OFFICE OF PIPELINE SAFETY’S ACTIONS TO STRENGTHEN ITS ENFORCEMENT PROGRAM (2004). First, OPS staff in the relevant Regional Office prepare a Violation Report that contains certain information about the alleged violation and applicable civil penalty factors. Second, OPS headquarters staff use that information to prepare a detailed Civil Penalty Worksheet containing a proposed civil penalty amount for each alleged violation. Third, the relevant OPS Regional Director includes the proposed civil penalty amount from the Civil Penalty Worksheet in the notice of probable violation (NOPV) that initiates the enforcement proceeding.

The Civil Penalty Worksheet that OPS headquarters staff uses to calculate proposed civil penalties is modified on a periodic basis to incorporate process improvements, changes in enforcement priorities, and other policy considerations. When these modifications occur, OPS's historical practice has been to calculate the amount of a proposed penalty using the version of the Civil Penalty Worksheet in effect when the Regional Director issues an NOPV. OPS has followed that practice even if a different version of the Civil Penalty Worksheet was in effect on the date when the alleged violation occurred, and even if the use of the earlier version would result in the calculation of a lower proposed civil penalty. In other words, OPS's practice created the possibility that a person who commits an alleged violation could ultimately be assessed a higher civil penalty based solely on after-the-fact modifications to the Civil Penalty Worksheet.

PHMSA is committed to ensuring that its practices for proposing and assessing civil penalties are fair and consistent with applicable procedural requirements. *See* DOT Enforcement Memo at 10. To meet that commitment, PHC is advising OPS to implement the following changes to its policy for calculating proposed civil penalties in pipeline safety enforcement proceedings.

POLICY

Effective as of May 20, 2025, PHC is advising OPS to calculate proposed civil penalties in pipeline safety enforcement proceedings using the version of the Civil Penalty Worksheet that was in effect on the date when an alleged violation occurred. PHC is advising OPS to apply this new policy in all cases that are currently pending before PHMSA and in all future proceedings.

PHC is advising OPS to implement this new policy in a manner that is fair and consistent with applicable procedural requirements, including with respect to “shar[ing] penalty calculation worksheets, manuals, charts, or other appropriate materials that shed[] light on the way penalties are calculated to ensure fairness in the process” DOT Enforcement Memo at 10.

PHC is not advising OPS to apply this new policy retroactively to enforcement actions that were already the subject of a final administrative action as provided in 49 CFR §§ 190.241 and 190.243(f). Nor is PHC advising OPS that its prior practice for calculating proposed civil penalties in pipeline safety enforcement proceedings violated any applicable law, statute, or regulation.