

## Response Options for Pipeline Operators & Excavators in Enforcement Proceedings

The provisions of 49 CFR Part 190, Subpart B (§§ 190.201–190.243) for pipeline operators and excavators (pursuant to 49 CFR § 196.203) govern response options to enforcement proceedings initiated by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).<sup>1</sup> Specifically, section 190.208 provides your response options upon receipt of an enforcement notice. You are advised to consult Subpart B for further information regarding your rights and responsibilities in such proceedings.

Be advised that all material submitted by a respondent in response to an enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. § 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. § 552(b).

### I. **Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:**

Within 30 days of receipt of a Notice of Probable Violation, the respondent must respond directly to the Regional Director who issued the Notice in the following way:

a. **When the Notice contains a PROPOSED CIVIL PENALTY\*-- you have 4 Options**

1. **You may decide NOT to contest the allegations.**

If you are not contesting any violations alleged in the Notice, pay the proposed civil penalty according to the details outlined in Paragraph IX below and advise the Regional Director of the payment in writing. This authorizes PHMSA to issue an order making findings of violation and upon confirmation that the payment has been received PHMSA will close the case (subject to any outstanding compliance order). Payment terms are outlined below;

2. **You may decide NOT to contest the allegations, but provide an EXPLANATION relevant to mitigation of the proposed penalty**

If you are not contesting any violations alleged in the Notice but wish to submit written explanations, information, or other materials you believe warrant mitigation of the civil penalty (including qualification as a small business – see Section VII in this document), you may submit such materials. If submitting written explanations regarding the effect of the proposed civil penalty on your ability to continue in business, include accurate and reliable information of your financial

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<sup>1</sup> The Code of Federal Regulations can be accessed online at <https://www.ecfr.gov/>

condition by which the agency can consider your claim. This authorizes PHMSA to make findings and to issue a Final Order. PHMSA will consider your submission in deciding whether to reduce or eliminate the penalty amount proposed in the Notice. Refer to 49 CFR §§ 190.221 – 190.225 for information concerning maximum penalties and assessment considerations upon which civil penalties are based;

3. You may decide to CONTEST the allegations in writing and elect NOT to have a hearing

If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations, including explanations, information, or other materials in answer to the allegations in the Notice. You may also state your reasons for objecting to the proposed civil penalty in whole or in part; or

4. You may decide to CONTEST the allegations and ask FOR A HEARING

If you are contesting one or more of the items in the Notice and are requesting an oral hearing, request a hearing as described in Paragraph III below to contest the allegations and/or proposed assessment of a civil penalty. Refer to section 190.211 for additional information concerning hearings.

b. When the Notice contains a **PROPOSED COMPLIANCE ORDER**-- you have 4 Options

1. You may decide NOT to contest the allegations

If you are not contesting the proposed compliance order and the alleged violations associated with it, notify the Regional Director that you intend to take the actions in the proposed compliance order;

2. You may decide NOT to contest the allegations, but provide an EXPLANATION relevant to modification of the proposed compliance order

If you are not contesting any violations alleged in the Notice, but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed compliance order in whole or in part, or you seek clarification of the terms of the proposed compliance order, you may submit such materials. This authorizes PHMSA to make findings and to issue a Final Order. PHMSA will consider your submission in deciding whether to modify the proposed compliance order;

3. You may decide to CONTEST the allegations in writing and elect NOT to have a hearing

If you are contesting one or more violation alleged in the Notice but are not requesting an oral hearing, submit a written response to the allegations, including explanations, information, or other materials in answer to the allegations in the Notice. You may also state your reasons for objecting to the proposed compliance order items in whole or in part; or

4. You may decide to CONTEST the allegations and/or the proposed compliance order items and ask FOR A HEARING

If you are contesting one or more of the items in the Notice and are requesting an oral hearing, request a hearing as described in Paragraph III below to contest the allegations and/or proposed compliance order items in whole or in part. Refer to section 190.211 for additional information concerning hearings.

- c. When the Notice contains a **WARNING ITEM (Pipeline Operators only)** --

No written response is required. An adjudication is not conducted for warning items. A warning notifies an operator of a probable violation and advises the operator to correct it or be subject to potential enforcement action in the future.

\* You must respond in one of the ways listed above within 30 days. In your response, you may also request a meeting with the Regional Director for clarification of the issues or to discuss the potential for use of a consent agreement. Failure to respond to the Notice under (a) or (b), as appropriate, within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

## II. **Procedures for Responding to a NOTICE OF AMENDMENT\* (Pipeline Operators only) --**

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. If you are not contesting the Notice of Amendment, notify the Regional Director of your plans to address the inadequacies identified in the Notice and/or submit copies of your amended procedures;
- b. If you are not contesting the Notice of Amendment but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed terms of the Notice of Amendment in whole or in part, or you

seek clarification of the terms of the Notice of Amendment, you may submit such materials. This authorizes PHMSA to make findings and issue an Order Directing Amendment;

- c. If you are contesting the Notice of Amendment but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the Notice of Amendment items in whole or in part; or
- d. Request a hearing as described below to contest the allegations in the Notice.

\* Failure of the respondent to respond to the Notice of Amendment within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

### III. **Procedure for Requesting a Hearing**

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the regulatory requirement or factual basis for the allegations, to the proposed compliance order, or to the proposed civil penalty amount. Refer to 49 CFR § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent may request that a hearing and final order be issued on an expedited basis. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$25,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 CFR § 190.211.

### IV. **Extensions of Time**

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

V. **Case File**

Pursuant to 49 CFR § 190.208(c), you may request the case file in all enforcement proceedings. Refer to 49 CFR § 190.209 for the contents of the case file. Documents in the case file will be provided upon request.

If the notice contains a proposed civil penalty, you may request a copy of the proposed civil penalty worksheet.

Pursuant to 49 U.S.C. § 60117(b)(1)(C), you may also request “all agency records pertinent to the matters of fact and law asserted” in the enforcement proceeding, such as initial inspection data from PHMSA’s Inspection Assistant software. Please note these materials may be voluminous depending on the size and scope of the inspection.

VI. **Freedom of Information Act**

When you submit information to PHMSA, we may make that information publicly available unless you ask that we keep the information confidential. You may ask us to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark “confidential” on each page of the original document you would like to keep confidential; (2) Send us, along with the original document, a second copy of the original document with the confidential commercial information deleted; and (3) Explain why the information you are submitting is confidential commercial information. PHMSA will treat as confidential the information that you submitted in accordance with the above paragraph, unless we notify you otherwise. If PHMSA decides to disclose the information, PHMSA will review your request to protect confidential commercial information under the criteria set forth in the Freedom of Information Act (FOIA), 5 U.S.C. § 552, including following the consultation procedures set out in the Departmental FOIA regulations, 49 CFR 7.29. If PHMSA decides to disclose the information over your objections, we will notify you in writing at least five business days before the intended disclosure date.

VII. **The Rights of Small Entities to Enforcement Fairness and Policy Against Retaliation**

The Department of Transportation has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights. Our objective is to ensure a fair regulatory enforcement environment. The US Small Business Administration (SBA) provides standards for small business classifications for Pipeline Transportation in the North American Industry Classification System Codes (NAICS). SBA size standards identified by North American Industry Classification System codes can be found in 13 CFR § 121.201. If you meet the SBA size standards, and would like PHMSA to consider this in this enforcement action, please respond with the relevant information you wish to be considered. Under appropriate circumstances, a potential penalty reduction or waiver may be considered by PHMSA.

13 CFR Part 121 has information about small business eligibility provisions and standards. If you feel you have been treated unfairly or unprofessionally, you may contact the PHMSA Office of Chief Counsel. If you are a small business, you also have the right to contact the Small Business Administration's National Ombudsman at 1-888-REG-FAIR or <https://www.sba.gov/ombudsman/comments> regarding the fairness of the compliance and enforcement activities of this agency.

The Department of Transportation strictly forbids retaliatory acts by its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about compliance and enforcement activities.

#### VIII. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to <https://www.sba.gov/ombudsman/comments>.

#### IX. **Payment Instructions**

##### ***Civil Penalty Payments of Less Than \$10,000***

Payment of a civil penalty of less than \$10,000 proposed or assessed, under 49 CFR Part 190 Subpart B in the Pipeline Safety Regulations, can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

DOT/PHMSA/ESC  
6500 S MacArthur Blvd.  
Oklahoma City, OK 73169-6918  
HQ BLDG ROOM 181 – AMK326

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the General Accounting Division at (405) 954-9309, or email at 9-AMC-AMZ-AR-PHMSA@faa.gov.

***Civil Penalty Payments of \$10,000 or more***

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made by wire transfer (49 CFR § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the General Accounting Division at (405) 954-9309, or email at 9-AMC-AMZ-AR-PHMSA@faa.gov.

## INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS FOR PIPELINE HAZARDOUS MATERIAL SAFETY ADMINISTRATION (PHMSA)

1. <u>BANK NAME:</u> TREAS NYC/FUNDS TRANSFER DIVISION 33 LIBERTY STREET; NEW YORK, NY 10045	6. <u>TYPE SUBTYPE</u> (Provided by Sending Bank)
2. <u>ABA/BIC/SWIFT (Routing) NUMBER</u> 021030004	7. <u>SENDING BANK NAME</u> (Provided by Sending Bank)
3. <u>ALC/IBAN (Account) NUMBER</u> 69140001	8. <u>SENDING BANK REF NO.</u> (Provided by Sending Bank)
4. <u>REASONS FOR PAYMENT</u> PHMSA Payment Case/Ticket/Fee #	9. <u>PRODUCT CODE</u> (Normally CTR, or Sending Bank)
5. <u>PAYMENT AMOUNT</u> Payment amount due	10. <u>SENDING BANK ARB NO.</u> (Provided by Sending Bank)

**INSTRUCTIONS:** You, as sender of the wire transfer, must provide the sending bank with the information from above. The information provided is constant and remain the same for all wire transfers to the Pipeline Hazardous Material Safety Administration.

**Block #1** – RECEIVER NAME - “TREAS NYC” Ensure the sending bank enters this abbreviation; it must be used for all wire transfer to the Treasury Department.

**Block #2** - RECEIVER ABA NO. - “021030004” Ensure the sending bank enters this nine-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York (TREAS NYC).

**Block #3** - BENEFICIAL - AGENCY LOCATION CODE – “69140001” Ensures the sending bank enters this information. This is the Agency Location Code for Pipeline Hazardous Materials Safety Administration (PHMSA).

**Block #4** - REASON FOR PAYMENT – “IN LIEU OF CHECK”. To ensure your wire transfer is credited properly, enter the appropriated bill, case, ticket, fee, travel #, or PHMSA info relating to payment.

**Block #5** - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

**Note:** - A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You, as the sender, can assist this process by notifying, at the time you send the wire transfer to the General Accounting Division (405) 954-9309 or email at 9-AMC-AMZ-AR-PHMSA@faa.gov.