

32. SUBPART E. PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

This subpart, DOT Order 5610.1D, and other applicable laws, regulations, and Executive Orders apply to all elements of the Pipeline Hazardous Materials Safety Administration (PHMSA) and all PHMSA actions, including but not limited to, new or revised agency rules and regulations, as well as projects and programs that are entirely or partly financed, assisted, conducted, regulated, or approved by PHMSA.

- a. Applicability. PHMSA's mission is to protect people and the environment by advancing the safe transportation of energy and other hazardous materials. To do this, the agency establishes national policy, sets, and enforces standards, educates, and conducts research to prevent incidents. Based on this mission, PHMSA's major Federal actions that are subject to NEPA review generally fall into three categories: regulatory actions, special permits, and natural gas distribution grant actions:
 - (1) Regulatory Actions. PHMSA promulgates regulations to improve the safety of transportation of hazardous materials in all modes, including the Hazardous Materials Regulations (49 CFR parts 171–180) and the Pipeline Safety Regulations (49 CFR parts 190–199). PHMSA does not site, permit, or authorize transportation infrastructure or the transportation of hazardous materials. PHMSA's regulatory standards are intended to reduce the likelihood of release of hazardous materials into the human environment during ongoing transportation of hazardous materials.
 - (2) Special Permits. A Special Permit sets forth alternative requirements, or variances, to the requirements in the Hazardous Materials Regulations (49 CFR parts 171–180) or Pipeline Safety Regulations (49 CFR parts 190–199). PHMSA may issue such variances if the applicant demonstrates an equivalent level of safety will be achieved or, if a required safety level does not exist, the alternative requirements are consistent with the public interest.
 - (3) Natural Gas Distribution Grants. PHMSA awards grants under programs including the Natural Gas Distribution Infrastructure Safety and Modernization grant program. This program assists municipalities or community-owned utilities (not including for-profit entities) in the repair, rehabilitation, or replacement of their natural gas distribution pipeline systems or portions thereof or in the acquisition of equipment to (1) reduce incidents and fatalities and (2) avoid economic losses.
 - (4) Other PHMSA actions subject to NEPA review may include administrative actions, such as administrative procurements or personnel actions.
- b. Roles And Responsibilities. In administering the National Environmental Policy Act (NEPA) process to PHMSA's actions, the following responsibilities apply:
 - (1) Pipeline and Hazardous Materials Safety Administration (PHMSA) Administrator. The Administrator or designee is responsible for ensuring Agency compliance with NEPA pursuant to delegated authority under DOT regulation 49 CFR 1.81(a)(5).
 - (a) The Administrator or designee must review and approve all final EIS and RODs.
 - (b) The Administrator or designee must appoint an Agency Environmental Coordinator within the Environmental Analysis and Compliance Division (EACD) to manage day-to-day NEPA functions, including approval of any CE determination, EA, FONSI, or DEIS. The

Agency Environmental Coordinator, or a designee, must lead and review development of all CE, EAs, FONSI, EISs and RODs.

- (2) Agency Environmental Coordinator. The Agency Environmental Coordinator must implement the provisions of NEPA on behalf of the Administrator or designee. This includes serving as an initial point of contact for interested parties to request information or status reports on environmental documents and other elements of the NEPA process. PHMSA must post the name and contact information of this individual on PHMSA's website.
 - (a) The Agency Environmental Coordinator, or a designee, must lead and review development of all CE, EAs, FONSI, EISs and RODs.
 - (b) The Agency Environmental Coordinator must implement a training program to ensure all PHMSA personnel engaged in programs and projects that may include a federal action subject to NEPA are familiar and comply with this Order.
 - (c) The Administrator delegates authority to the Agency Environmental Coordinator to designate a Lead Environmental Protection Specialist and a Federal Preservation Officer.
 - (3) Lead Environmental Protection Specialist. The Lead Environmental Protection Specialist or appropriate representative must coordinate NEPA activities for grant programs and is authorized to approve EAs, FONSI, and CE determinations for these programs, following consultation with the Program Offices and PHMSA Office of Chief Counsel, and final authorization from the Agency Environmental Coordinator.
 - (4) Federal Preservation Officer. The Federal Preservation Officer is authorized to act as the PHMSA agency official, under 36 CFR 800, consult on the behalf of PHMSA, sign PHMSA correspondence, and identify Program Alternatives for the purpose of compliance with section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation.
 - (5) PHMSA Office of Chief Counsel. The PHMSA Office of Chief Counsel will review all EAs, FONSI, Draft EISs, Final EISs, RODs, and analyses under Section 4(f) of the U.S. Department of Transportation Act (49 U.S.C. § 303). At its discretion, the Office of Chief Counsel may review any other environmental document, including CE determinations, to ensure legal compliance and assess legal risk.
- c. Categorical Exclusions. PHMSA may utilize its own agency CE, in addition to DOT's CE listed in Appendix A or another agency's CE, using the procedures described in this section and DOT Order 5610.1, Section 9, to categorically exclude a proposed action. Approved CE will be posted on the PHMSA website at www.phmsa.dot.gov/planning-and-analytics/environmental-analysis-and-compliance/implementing-procedures
- (1) Equipment acquisition (including purchase or lease) of handheld and mobile methane detection equipment and associated vehicles.
 - (2) Granting, renewing, or denying a special permit related to waiving class location or odorization requirements, following the procedures set forth in 49 CFR 190.341, including the identification of any enforceable conditions, imposed pursuant to 49 CFR 190.341(d)(2), that are required to prevent and address pipeline safety and environmental risk.
 - (3) Rulemaking actions by the Office of Hazardous Materials Safety, other than deregulatory rulemaking actions, within one of the following categories:

- (a) Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature;
 - (b) Regulations designating, defining, or classifying regulated materials (hazardous materials, hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in 49 CFR part 173);
 - (c) Regulations imposing requirements on transportation of regulated materials, including shipping papers, marking, labeling, placarding, emergency response information, training, and safety and security plans;
 - (d) Regulations concerning stowage and segregation of regulated materials in transportation, including rail car, portable tank, and cargo tank placement; loading, unloading, transportation, and storage of regulated materials by mode (rail, aircraft, vessel, and highway); revising standards for bulk and non- bulk packages (cylinders, portable tanks, cargo tanks, radioactive packages, intermediate bulk containers, drums, jerricans, boxes, and composite packagings, etc.); or incident reporting or tracking of regulated movements;
 - (e) Editorial or technical revisions and clarifications to correct editorial errors and improve clarity; and
 - (f) Training, testing, and qualification of regulated materials personnel.
- (4) Rulemaking actions by the Office of Pipeline Safety, other than deregulatory rulemaking actions, within one of the following categories:
- (a) Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature;
 - (b) Regulations concerning corrosion control; training, testing, and qualification of operator personnel; or emergency response;
 - (c) Editorial or technical revisions and clarifications to correct editorial errors and improve clarity; and
 - (d) Revisions to civil penalty amounts that may be imposed for violations of certain DOT regulations.
- (5) Repair, rehabilitation, or replacement of natural gas distribution pipelines and associated equipment within existing rights-of-way or easements. Associated actions include but are not limited to replacement of service lines, meters, metering stations, valves, taps, abandonment in place or abandonment by removal, minor excavation, replacement of pavement of existing roadway and/or sidewalks, and relocation within existing rights-of-way or easements. Actions will follow the applicable safety standards and requirements described at 49 CFR part 192.
- d. Extraordinary Circumstances.

Extraordinary circumstances are factors or circumstances that indicate that a normally categorically excluded action may have a significant environmental impact. If an extraordinary circumstance exists, the Agency Environmental Coordinator, or designated representative, must consult the PHMSA Office of Chief Counsel and Program Offices to confirm whether the use of a

CE is appropriate. PHMSA may determine that, notwithstanding the extraordinary circumstance, the proposed agency action is not likely to result in reasonably foreseeable adverse significant impacts and apply the CE. If the Agency Environmental Coordinator or designated representative determines that use of a CE is inappropriate, the level of NEPA review should typically be an EA or EIS subject to the final determination of the Administrator. PHMSA will apply the extraordinary circumstances listed in Section 9.c. of this Order. Additional extraordinary circumstances PHMSA should consider include, but are not limited to:

- (1) The proposed action may increase the likelihood of a reasonably foreseeable release under the Hazardous Materials Regulations (49 CFR parts 171–180) or Pipeline Safety Regulations (49 CFR parts 190–199).
 - (2) The proposed action may have an adverse impact on Floodplains, as defined in Executive Order 11988, Floodplain Management, as amended by Executive Order 13690, and DOT Order 5650.2. PHMSA’s compliance with these Orders will inform its extraordinary circumstances analysis.
- e. Procedures for Applicant-Prepared Environmental documents. PHMSA is responsible for the accuracy, scope, and content of all environmental documents, and must ensure they are prepared with professional and scientific integrity, using reliable data and resources. In accordance with section 107(f) of NEPA, applicants, including applicant-directed contractors, may prepare EAs and EISs under PHMSA’s supervision, subject to the following procedures:
- (1) If an applicant chooses to use a contractor to prepare an environmental document, PHMSA must ensure that all costs of using a contractor will be borne by the applicant. Furthermore, PHMSA must ensure a disclosure statement is prepared for the contractor’s execution specifying that the contractor has no financial or other interest in the outcome of the action.
 - (2) PHMSA must participate in and supervise the document’s preparation. PHMSA must assist contractors and applicants by providing guidance and outlining the types of information required for the preparation of the environmental document. Additionally, PHMSA must collaborate with the contractor to ensure the analysis is focused on areas where there is a higher potential for significant impacts.
 - (3) PHMSA must review and approve the statement of purpose and need and the alternatives that will be considered in the environmental document at an early time, before the applicant (or the applicant’s contractor) prepares the rest of the environmental document.
 - (4) PHMSA must independently evaluate the environmental document and take responsibility for its accuracy, scope, and contents. PHMSA may choose in its discretion to accept, edit, revise, or independently author sections of the document or the whole document.
 - (5) PHMSA must include a statement in any environmental document prepared by an applicant or contractor stating that PHMSA has independently evaluated the document for its accuracy, scope, and contents. The environmental document must include the names and qualifications of individuals responsible for preparing and reviewing the document, including those individuals from PHMSA responsible for conducting the Agency’s independent evaluation.
 - (6) PHMSA must independently prepare FONSI and RODs without the support of an applicant or their contractor.

- (7) PHMSA must ensure that the applicant preserves and includes in a decision file all factual, scientific, or technical information used, developed, or considered by the applicant in the course of preparing the draft environmental document, including any correspondence with PHMSA or with third parties.
- f. Where the Public Can Access Information or Status Reports on Projects. Interested persons may find information on projects and agency initiatives at PHMSA's Newsroom, located on the PHMSA website at <https://www.phmsa.dot.gov/newsroom>.
- (1) Regulatory Actions. PHMSA must notify the public of the availability of Draft EAs and DEISs for regulatory actions subject to public notice and comment, to solicit public comment. PHMSA may publish the Draft EA in the "Regulatory Notices and Analyses" section of a Notice of Proposed Rulemaking or supplemental Notice of Proposed Rulemaking, or as a standalone document in the docket for the rulemaking action, found at www.regulations.gov (in which case PHMSA must include a citation to the docket in the "Regulatory Notices and Analyses" section).
- (2) Special Permits. Special permits and associated environmental documents are posted in the Federal Register and available at www.regulations.gov. Copies these documents are also posted on the PHMSA website at <https://www.phmsa.dot.gov/guidance>. A special permit, or regulatory waiver, is an order by which PHMSA waives compliance with one or more of the requirements in the hazardous material regulations (49 C.F.R. Parts 171-180) or pipeline safety regulations (49 C.F.R. Parts 190-199), subject to conditions set forth in the permit.
- (3) Natural Gas Distribution Grants. For site-specific construction projects, such as natural gas distribution grants, PHMSA provides public access to CEs, EAs, and DEISs on PHMSA's website at <https://www.phmsa.dot.gov/about-phmsa/working-phmsa/grants/pipeline/phmsa-tier-2-site-specific-environmental-assessment>. PHMSA must solicit public comment on Draft EAs and DEISs. PHMSA will confirm that grantees must also make these documents available in a location that is locally accessible to where the proposed action is located.