



U.S. Department of Transportation  
**Pipeline and Hazardous Materials Safety  
Administration**  
1200 New Jersey Avenue, SE  
Washington, DC 20590

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**MEMO TO FILE**

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**Subject:** **Categorical Exclusion Determination**  
**Pipeline Safety: Declaratory Order Procedures**

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#### **FINAL ACTION**

In this final rule, PHMSA is adopting a new regulation at 49 CFR 190.13 to establish procedures for issuing declaratory orders. PHMSA regulations provide procedural mechanisms for the availability of informal guidance and written interpretations to provide clarity to pipeline operators regarding compliance with federal pipeline safety regulations in § 190.11. The Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2020 further directed PHMSA to “allow an operator to request that an issue of controversy or uncertainty be addressed through a declaratory order in accordance with section 554(e) of title 5.” Pub. L. 116-260, 134 Stat. 2222, Sec. 108(a)(2), Dec. 27, 2020 (codified at 49 U.S.C. § 60117(b)(1)(J)). PHMSA adopts this final rule to provide implementing procedures for the PIPES Act of 2020 mandate. This final rule provides clarity to operators on how to petition for a declaratory order, how PHMSA will consider the petition, how PHMSA will issue the declaratory order or deny the petition, and the availability of a petition for reconsideration and judicial review.

#### **APPLICABLE CATEGORICAL EXCLUSION**

Categorical exclusions (CE) are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or an environmental impact statement (EIS). [DOT Order 5610.1D](#), DOT’s current National Environmental Policy Act (NEPA) procedures, notes in paragraph 9(f) that “[a]n OA may apply a CE established in another OA’s procedures.” PHMSA coordinated with the Federal Highway Administration (FHWA) to determine that the following FHWA CE is applicable to the action described above and can be used by PHMSA per Section 9(f) of DOT Order 5610.1D:

