



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

DATE 04/21/2026

MEMO TO FILE

From: Carolyn Nelson, P.E.
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Subject: **Categorical Exclusion Determination**
Pipeline Safety: Consent Orders

FINAL ACTION

In this final rule, PHMSA is amending its procedural regulations to clarify that consent agreements may be used to resolve all PHMSA enforcement proceedings, including cases with civil penalties. PHMSA regulations governing enforcement matters allow the parties to resolve disputed matters in a pending enforcement proceeding via consent agreement and order. However, the text of the applicable 49 CFR part 190 regulations only specifically references resolution of compliance orders, safety orders, and corrective action orders through consent agreement and order. This could cause pipeline operators to mistakenly think that the option of a consent agreement and order is not available to resolve other enforcement matters, such as an enforcement proceeding that includes a civil penalty. Further, the response options for pipeline operators specified in the PHMSA regulations do not mention the option to request execution of a consent order for notices of probable violation with a civil penalty. Therefore, to clarify that consent agreements and orders may be utilized by the parties in an enforcement matter to resolve all enforcement proceedings brought under the part 190, subpart B, regulations, PHMSA amends § 190.219(a) to state that any pending enforcement proceeding may be resolved by consent agreement and order; amends § 190.219(b)(3) to reference enforcement notices generally, rather than notices of probable violation specifically; and includes as an available response option in § 190.208(a) a request for execution of a consent agreement and order for notices of probable violation that include a civil penalty.

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:

*Promulgation of rules, regulations, and directives.*¹

UNUSUAL CIRCUMSTANCES

Based on the scope of the action, PHMSA has determined that this rulemaking action does not meet the criteria for unusual circumstances listed in 23 CFR 771.117(b), which would require PHMSA to conduct appropriate environmental studies to determine if the CE classification is proper.

DETERMINATION

PHMSA analyzed the final rule and determined that the rulemaking will not adversely affect safety and will not significantly affect the quality of the human and natural environment. Based on the information provided in the final rule, including a review of unusual circumstances, PHMSA finds the final action qualifies as a Categorical Exclusion in accordance with Section 102 of the National Environmental Policy Act, 42 U.S.C. § 4332, DOT Order 5610.1D, Departmentwide National Environmental Policy Act Implementing Procedures, and 23 CFR 771.

Approved by the Environmental Analysis and Compliance Division:

¹ 23 CFR 771.117(c)(20)