commitment to submit attainment contingency measures to satisfy the requirements in sections 172(c)(9) and 182(c)(9) of the Clean Air Act, only.

(B) * * *

(*4*) Final 2016 Air Quality Management Plan (March 2017) and appendices, adopted March 3, 2017, excluding the portions of the plan and appendices related solely to $PM_{2.5}$ and Coachella Valley, and excluding the portion of chapter 6 that is titled ''California Clean Air Act Requirements,'' chapter 8 (''Looking Beyond Current Requirements''), chapter 9 (''Air Toxics Control Strategy'') and chapter 10 (''Climate and Energy'').

(*5*) Resolution 17–2, A Resolution of the South Coast Air Quality Management District (SCAQMD or District) Governing Board certifying the Final Program Environmental Impact Report (PEIR) for the 2016 Air Quality Management Plan (AQMP or Plan), and adopting the 2016 AQMP, which is to be submitted into the California State Implementation Plan (SIP), March 3, 2017, commitments to develop, adopt, submit and implement the ozone control measures in tables 4–2 and 4–4 of chapter 4 in the AQMP as expeditiously as possible to meet or exceed the commitments identified in tables 4–9, 4–10 and 4–11 of the AQMP, and to substitute any other measures as necessary to make up any emissions reduction shortfall.

* * * * *

(525) The following plan was submitted on December 20, 2018, by the Governor's designee.

(i) [Reserved]

(ii) Additional materials.

(A) South Coast Air Quality Management District.

(*1*) Updated Federal 1979 1-Hour Ozone Standard Attainment Demonstration (November 2018), adopted November 2, 2018.

(*2*) [Reserved]

(B) [Reserved]

(526) The following rule was submitted on August 5, 2019, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 301, ''Permitting and Associated Fees'' (paragraphs (e)(1), except (e)(1)(C), (e)(2), (5), and (8) only), amended on July 12, 2019.

(*2*) [Reserved]

(B) [Reserved]

(ii) [Reserved]

■ 3. Section 52.244 is amended by adding paragraph (a)(8) to read as follows:

§ 52.244 Motor vehicle emissions budgets.

* * * * *

(8) South Coast, approved October 31, 2019.

* * * * *

■ 4. Section 52.248 is amended by adding paragraph (h) to read as follows:

§ 52.248 Identification of plan—conditional approval.

* * * * *

(h) The EPA is conditionally approving the California State Implementation Plan (SIP) for the South Coast for the 2008 ozone NAAQS with respect to the reasonable further progress (RFP) contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9). The conditional approval is based on a commitment from the South Coast Air Quality Management District (District) in a letter dated January 29, 2019, and clarified in a letter dated May 2, 2019, to adopt specific rule revisions, and a commitment from the California Air Resources Board (CARB) dated February 13, 2019 to submit the amended District rule or rules to the EPA within 12 months of the effective date of the final conditional approval. If the District or CARB fail to meet their commitments within one year of the effective date of the final conditional approval, the conditional approval is treated as a disapproval.

[FR Doc. 2019–21325 Filed 9–30–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 190

[Docket No. PHMSA–2016–0091; Amdt. No. 190–21]

RIN 2137–AF26

Pipeline Safety: Enhanced Emergency Order Procedures

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: On October 14, 2016, PHMSA published an interim final rule (IFR) issuing temporary emergency order procedures and requesting public comment. This final rule adopts, with modifications, that IFR implementing the emergency order authority conferred on the Secretary of Transportation (the Secretary) by the ''Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016'' (PIPES Act). These regulations establish procedures for the issuance of emergency orders to address an unsafe condition or practice, or a combination of unsafe conditions or practices, that constitute or cause an imminent hazard to public health and safety or the environment. The regulations describe the duration and scope of such orders and provide a mechanism by which pipeline owners and operators subject to, and aggrieved by, emergency orders can seek administrative or judicial review.

DATES: This final rule is effective December 2, 2019.

FOR FURTHER INFORMATION CONTACT: James M. Pates, Assistant Chief Counsel for Pipeline Safety, PHMSA, by telephone at (202) 366–0331 or by mail at U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

Section 16 of the PIPES Act (section 16) adds to 49 U.S.C. 60117(o) by establishing a new emergency order authority for the Secretary [1] in the area of pipeline safety. In section 16, Congress directed PHMSA to develop procedures for the issuance of emergency orders to address unsafe conditions or practices that constitute or cause an imminent hazard. This new authority augments PHMSA's existing authority (*e.g.,* corrective action orders, safety orders) to address hazardous conditions and pipeline integrity risks by allowing PHMSA to act quickly to address imminent safety hazards that exist across a group of pipeline owners and operators. As required by section 16, on October 14, 2016, PHMSA issued an IFR establishing procedures for the issuance of emergency orders to address unsafe conditions or practices, or a combination of unsafe conditions or practices, that constitute or are causing an imminent hazard. Further, the PIPES Act mandated that PHMSA issue final regulations carrying out section 16 no later than 270 days following enactment of the PIPES Act.

[1] The Secretary has delegated the responsibility to exercise the authority vested in chapter 601 of title 49, U.S.C. to the PHMSA Administrator. *See* 49 CFR 1.97(a).

B. Summary of the Major Provisions of the Regulatory Action

Pursuant to section 16, this final rule amends the Federal pipeline safety regulations by establishing procedures to implement the expanded emergency order enforcement authority set forth in the IFR. These procedures will apply only when PHMSA determines that an unsafe condition or practice constitutes or is causing an imminent hazard. PHMSA may issue an emergency order without advance notice or opportunity for a hearing. Additionally, PHMSA may impose emergency restrictions, prohibitions, or other safety measures on owners and operators of gas or hazardous liquid pipeline facilities, but only to the extent necessary to abate the imminent hazard. Based on comments received from industry and the public, several provisions in the IFR have been modified or clarified by this final rule.

C. Cost and Benefit

By implementing this statutory mandate, PHMSA will enhance its existing enforcement authority to respond immediately to conditions or practices that exist in the pipeline industry or a subset thereof. This final rule solely affects agency enforcement procedures to implement the emergency order provisions of the law; therefore, this rulemaking results in no additional burden or compliance costs to industry.

II. Background

A. Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016

On June 22, 2016, the President signed the PIPES Act (Pub. L. 114–183, 130 Stat. 514), which amended the Pipeline Safety Laws in chapter 601 of title 49, United States Code. Congress enacted section 16 to permit PHMSA to address conditions or practices that extend beyond or affect more than a single pipeline owner or operator, and which must be addressed immediately to protect life, property, or the environment. Section 60117(o) authorizes PHMSA to issue an emergency order if it determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, constitutes or is causing an imminent hazard. Under this section, an emergency order may impose emergency restrictions, prohibitions, or other safety measures on owners and operators of gas or hazardous liquid pipeline facilities, without prior notice or an opportunity for a hearing, but only to the extent necessary to abate the imminent hazard. This regulatory authority allows PHMSA to impose conditions on a group of pipeline owners and operators, facilities, or systems, in accordance with the statutorily-mandated procedures outlined in the PIPES Act and this final rule.

B. Current Authorities: Corrective Action Orders and Safety Orders

1. Corrective Action Orders

Section 60112 of title 49 provides for the issuance of a corrective action order (CAO) to the owner or operator of a pipeline facility if the agency finds that operation of a pipeline facility is or would be hazardous to life, property, or the environment. Prior to issuing a CAO, the Associate Administrator for Pipeline Safety (the Associate Administrator) must consider the following factors, if relevant:

(a) The characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction or assembly;

(b) The nature of the materials transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such materials are transported, and the pressure required for such transportation;

(c) The characteristics of the geographical areas in which the pipeline facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas;

(d) Any recommendation of the National Transportation Safety Board (NTSB) issued in conjunction with any investigations conducted by the NTSB; and

(e) Such other factors as the Associate Administrator may consider appropriate.

After weighing these factors and finding that a particular facility is or would be hazardous to life, property, or the environment, the Associate Administrator may order the suspended or restricted use of a pipeline facility, physical inspection, testing, repair, replacement, or other appropriate action. Furthermore, if the Associate Administrator determines that the failure to issue the order expeditiously would result in the likelihood of serious harm to life, property, or the environment, the CAO may be issued without prior notice and an opportunity for a hearing. In such cases, the affected owner or operator must be provided with the opportunity for a hearing and ''expedited review'' as soon as practicable following issuance of the CAO. Historically, PHMSA has used CAOs to address a single owner, operator, or pipeline facility.

2. Safety Orders

Similarly, section 60117 provides for the issuance of a notice of proposed safety order (NOPSO) to the owner or operator of a pipeline facility where the agency finds that a particular pipeline facility has a condition or conditions that pose an integrity risk to public safety, property, or the environment that may not require immediate corrective action but needs to be addressed over time. The NOPSO proposes specific measures that an operator must take to address the identified risk, which may include physical inspections, testing, repairs, or other appropriate actions to remedy the identified risk or condition. A NOPSO addresses pipeline integrity risks that may require the owner or operator to take immediate corrective actions or risks that must be addressed over a longer period. Historically, these orders have likewise been issued to a single owner, operator, or pipeline facility and are not intended to address imminent safety or environmental hazards.

C. Hazardous Materials Emergency Order Authority

In addition to its authorities granted under chapter 601, title 49 of the United States Code, PHMSA conducts a separate regulatory program governing the transportation of hazardous materials by means other than pipelines (*e.g.,* rail, air). Under the statute governing the safe transportation of hazardous materials, 49 U.S.C. chapter 51, as amended by the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (HMTSSRA; Pub. L. 109–59; August 10, 2005), expanded the Secretary's inspection authority for hazardous materials transportation, as well as investigation and enforcement authority. Prior to the enactment of HMTSSRA, DOT could only obtain relief against a hazardous-materials safety violation posing an imminent hazard through a court order. After finding such a threat, the applicable DOT operating administration (*e.g.,* Federal Railroad Administration, PHMSA) was required to enlist the Department of Justice to file a civil action against the offending party and seek a restraining order or preliminary injunction. As a practical matter, judicial relief could rarely be obtained

before the hazardous materials transportation had been completed.

On March 2, 2011, PHMSA published a final rule, titled ''Hazardous Materials: Enhanced Enforcement Authority Procedures,'' (76 FR 11570), to remedy this problem. The hazardous materials regulations, codified at 49 CFR 109.17 and 109.19, allow PHMSA to issue emergency orders to abate unsafe conditions or practices posing an imminent hazard related to the transportation of hazardous materials, and include streamlined administrative remedies that materially enhanced PHMSA's ability to prevent the unsafe movement of hazardous materials. Section 16 of the PIPES Act directs the Secretary to adopt a review process for pipeline emergency orders that contains the same procedures as those in 49 CFR 109.19(d) and (g) and that is ''otherwise consistent with the review process developed under [49 CFR 109.19], to the greatest extent practicable and not inconsistent with this section.'' As a result, this final rule is modeled in many respects after the enhanced authority conferred by HMTSSRA and contained in 49 CFR 109.19.

D. Need for Enhanced Emergency Order Authority for Pipelines

While the CAO has proven to be an effective tool to address a particular pipeline operator's hazardous facility, no enforcement vehicle existed, prior to passage of the PIPES Act, that would allow PHMSA to address immediate safety threats facing the wider pipeline industry. This new enforcement tool enables the PHMSA Administrator (the Administrator) to issue an emergency order prohibiting an unsafe condition or practice and imposing affirmative safety measures when an unsafe condition, practice, or other activity constitutes or is causing an imminent hazard to life, property or the environment. The emergency order authority conferred by the PIPES Act is intended to serve as a flexible enforcement tool that can be used in emergency situations to address time-sensitive safety conditions affecting multiple owners or operators, facilities, or systems that present an imminent hazard. Unlike a CAO or NOPSO issued to a single operator, an emergency order affects multiple or all operators and pipeline systems that share a common characteristic or condition.

A variety of circumstances could warrant the issuance of an emergency order, including: (1) Where a natural disaster affects many pipelines in a specific geographic region; (2) where a serious flaw has been discovered in pipe, equipment manufacturing, or supplier materials; and (3) where an accident reveals that a specific industry practice is unsafe and needs immediate or temporary correction. This list is not intended to be exhaustive. PHMSA will examine the specific facts in each situation to determine if an imminent hazard exists and will tailor each emergency order to address the specific imminent hazard under the circumstances presented while observing the statutorily-mandated due process procedures.

E. Interim Final Rule

On October 14, 2016, PHMSA issued an IFR adopting temporary regulations governing emergency orders. The IFR implemented the authority conferred by the PIPES Act that allowed PHMSA to issue an emergency order without prior notice or an opportunity for a hearing when an unsafe condition or practice, or a combination of unsafe conditions and practices, constitutes or is causing an imminent hazard. PHMSA simply adopted the statutory definition of ''Imminent hazard'' found in section 16, namely, the existence of a condition relating to one or more pipeline facilities that ''presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of such death, illness, injury, or endangerment.''

In the IFR, PHMSA followed the statutory language in section 16 to provide that, before issuing an emergency order, the agency must consider its potential impact on the public health and safety, on the national or regional economy, or national security, as well as the ability of owners and operators of pipeline facilities to maintain reliability and continuity of service to customers. As part of this deliberative process, PHMSA shall ''consult, as the [Administrator] determines appropriate, with appropriate Federal agencies, State agencies, and other entities knowledgeable in pipeline safety or operations.''

The IFR also provided that any entity subject to, and aggrieved by, an emergency order would have the right to file a petition for review with PHMSA to determine whether the order should remain in effect, be modified, or be terminated. If the agency does not reach a decision with respect to the petition before the end of a 30-day review period (beginning when the petition is filed), the order will cease to be effective unless the Administrator determines in writing, on or before the last day of the review period, that the imminent hazard still exists.

III. Summary and Response to Comments

PHMSA received eight comments from pipeline trade associations, pipeline operators, and citizens.

List of Commenters:

1. American Fuel & Petrochemical Manufacturers (AFPM)
2. The American Gas Association (AGA)
3. The American Petroleum Institute and the Association of Oil Pipe Lines (API/AOPL)
4. Chaparral Energy, Inc. (Chaparral)
5. GPA Midstream Association (GPA)
6. Interstate Natural Gas Association of America (INGAA)
7. ONEOK Partners, L.P. (ONEOK)
8. Peter Miller

General Comments

Most of the comments were generally supportive of the IFR. AFPM, AGA, API/AOPL, and INGAA were concerned, however, about the lack of a notice and comment period prior to issuance of the IFR and PHMSA's decision to issue temporary regulations through an IFR. The industry commenters also requested a number of amendments aimed at ensuring various procedural safeguards, including the narrowing of the grounds for issuing emergency orders, guaranteeing the right of every petitioner to secure a formal hearing before an administrative law judge (ALJ), setting more liberal deadlines for filing petitions for reconsideration from the report and recommendation of an ALJ, and requiring personal service of emergency orders. One comment was outside of the scope of the rulemaking because it addressed issues involving pipeline safety generally and did not address the IFR.

PHMSA Response

PHMSA believes that issuance of the IFR was the appropriate course of action for PHMSA to take, given the explicit direction from Congress that the Secretary issue temporary regulations within 60 days of enactment of the PIPES Act. However, to obtain meaningful input from the public, PHMSA included a 60-day comment period following issuance of the IFR. This allowed PHMSA to comply with the Congressional mandate to move quickly, while also providing the public with an opportunity to comment on the IFR prior to issuance of a final rule. PHMSA has carefully considered each comment and addressed them in this final rule. Where appropriate, PHMSA has modified the emergency order

regulations in response to public comments.

Summary of Public Comments on § 190.3, Definitions

AGA, API/AOPL, INGAA, and ONEOK commented that the definition of ''emergency order'' should be changed to include the limitation contained in section 16 that the emergency restrictions, prohibitions, and safety measures set forth in an order must be imposed ''only to the extent necessary to abate the imminent hazard.'' GPA cited to the statutory definition of ''emergency order'' and stated that it is in agreement with each concern raised by API/AOPL.

Chaparral commented that the phrase ''affected entities'' in the definition of ''emergency order'' be changed to ''respondents'' because ''respondent'' is a defined term under § 190.3, whereas there is no definition in either the statute or the pipeline safety regulations for the term ''affected entities.'' It also stated that the term ''respondent'' is used throughout the Pipeline Safety Enforcement and Regulatory Procedures in 49 CFR part 190 and that its use would therefore be more consistent with the terminology used elsewhere in Part 190. Chaparral further suggested that PHMSA add a new definition for the term ''formal hearing,'' to distinguish it from PHMSA's typical informal enforcement hearings.[2]

AGA suggested that PHMSA modify the definition of the term ''imminent hazard.'' The IFR provides that an imminent hazard exists where there is a substantial likelihood that harm ''may occur before the reasonably foreseeable completion date of a formal administrative proceeding begun to lessen the risk'' of such harm. In a footnote, AGA noted that PHMSA had added the word ''administrative'' to the term ''formal proceeding'' in the definition of ''Imminent hazard'' and requested that it be deleted to be consistent with the definition of ''imminent hazard'' in section 16.

PHMSA Response

PHMSA agrees with AGA, API/AOPL, INGAA, and ONEOK that the final rule should make clear that an emergency order may be issued ''only to the extent necessary to abate the imminent hazard.'' Therefore, the final rule amends § 190.236(a) by adding the commenters' suggested language to limit the agency's authority to make a determination that an imminent hazard exists. Because this limiting language more properly affects the authority of PHMSA to make a *finding* of an imminent hazard rather than the *definition* of what constitutes an ''emergency order,'' the definition in § 190.3 has not been changed.

PHMSA believes that this change is appropriate to clarify that an emergency order may not be used as a substitute for notice and comment rulemaking. The PIPES Act distinguishes between emergency order authority, which is intended to address an imminent hazard, and rulemaking activity, making it clear that an emergency order may not be construed to ''alter, amend, or limit the Secretary's obligations under, or the applicability of, [the Administrative Procedure Act.]'' However, PHMSA will consider issuing a regulation through notice and comment rulemaking, if appropriate, based on the unique circumstances that may arise while an emergency order is in effect, or if sufficient time has elapsed and the condition causing the determination of the imminent hazard continues to exist (as discussed below in the ''Summary of Public Comments to Adding § 190.236(e), Emergency Orders, Savings and Limitations'' and in ''IV. Section-by-Section Analysis'' for § 190.236).

Procedural safeguards also exist to protect the rights of operators to challenge PHMSA's determination or to remove an emergency order when an imminent hazard no longer exists, either generally or as to an operator individually based on unique facts or circumstances. The operator may petition for review of an emergency order with PHMSA, and receive final agency action on the emergency order within 30 days. If an operator receives an adverse determination from PHMSA, the operator may seek judicial review.

PHMSA agrees with commenters, for the reasons stated above, that the phrase ''affected entities'' in the definition of ''emergency order'' should be changed to ''owners and operators'' because paragraph (o)(1) of 49 U.S.C. 60117, as amended by the PIPES Act, limits the entities potentially subject to emergency orders to ''owners and operators of gas or hazardous liquid pipeline facilities.'' While Chaparral suggested replacing ''affected entities'' with ''respondents,'' PHMSA thinks the change to ''owners and operators'' is preferable because it is more specific and tracks the language of the PIPES Act.

PHMSA also agrees with commenters that it would be helpful to clarify that a ''formal hearing'' is a formal proceeding on the record conducted by an ALJ in accordance with 5 U.S.C. 554 and should be distinguished from PHMSA's informal adjudications. Therefore, PHMSA is amending § 190.3 to add a definition of the term ''formal hearing'' and to use that term generally to refer to administrative hearings held under the final rule.

As for AGA's comment that the word ''administrative'' should be deleted from the phrase ''formal administrative proceeding'' in the definition of ''imminent hazard,'' PHMSA agrees and has deleted the word ''administrative'' to clarify that a finding of an imminent hazard must be based on a determination that the harm posed by the hazard may occur before the reasonably foreseeable completion date of a formal proceeding, whatever its form, that is brought to lessen the risk of such harm.

Summary of Public Comments on §§ 190.5, Service, and 190.236(d), Emergency Orders, Service

AFPM, AGA, API/AOPL, and INGAA commented that emergency orders should not be exempt from PHMSA's general service requirements and that the current service provisions of § 190.5 should not be changed. They also suggested that § 190.236(d) be removed, since it is unnecessary if § 190.5 is unchanged.

AGA and API/AOPL suggested that in addition to personal service, affected operators should be notified in an email distribution sent to all individuals listed as ''Compliance Officers'' and alternate contacts in PHMSA's Operator Identification Contact Management Section of the PHMSA Portal.

PHMSA Response

PHMSA agrees with the commenters' suggestion that PHMSA provide personal service of emergency orders to all pipeline operators subject to the orders. Given the importance that operators receive notice of such orders, PHMSA will also provide notice by posting a copy of each order in the **Federal Register** and on the PHMSA website as soon as practicable upon issuance. The intent is to provide the same type of personal service for emergency orders as PHMSA currently provides for other enforcement actions issued under Part 190, plus notice on the PHMSA website and in the **Federal Register**. PHMSA is therefore deleting the amendment of § 190.5 and amending § 190.236(d) to provide that PHMSA will provide personal service of emergency orders, pursuant to § 190.5, to pipeline owners and operators subject to the order, plus general notice by posting the orders on the PHMSA

[2] Chaparral also recommended that PHMSA amend § 190.3 to expressly incorporate the definitions contained in §§ 192.3 and 195.2, as applicable, into Part 190. This comment goes beyond the scope of the final rule and therefore is not addressed.

website and by publication in the **Federal Register**.

Personal service will be consistent with the provisions of the current § 190.5, which states that PHMSA will effectuate personal service by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt. Since this is the same personal service that is already provided in other enforcement actions, PHMSA believes that the agency can effectively and expeditiously provide personal service of emergency orders to all affected operators. In addition, every pipeline operator is required to file reports annually with the agency, so PHMSA's database is kept current.

Because PHMSA has changed the final rule to provide personal service to all affected pipeline owners and operators, as suggested by the commenters, and is also providing general notice on PHMSA's website and in the **Federal Register**, PHMSA believes there is no need to adopt the additional suggestion from AGA and API/AOPL that PHMSA notify operators by email sent to all individuals listed as ''Compliance Officers'' and alternate contacts in PHMSA's Operator Identification Contact Management Section. Should affected owners and operators wish to share an emergency order, they may always do so.

Summary of Public Comments to § 190.236(a), Emergency Orders, Determination of Imminent Hazard

Section 16 of the PIPES Act provides that when PHMSA issues an emergency order, the order must contain a written description of ''the violation, condition, or practice that constitutes or is causing the imminent hazard.'' AGA, API/AOPL, and INGAA commented that PHMSA does not have the authority under the PIPES Act to issue an emergency order based on a violation of the Federal pipeline safety laws, or a regulation or order prescribed under them. The commenters stated that they do not believe a violation of a pipeline safety law, or regulation or order thereunder, in and of itself, could be a sufficient basis to issue an emergency order. API/AOPL raised due process concerns if an operator does not have prior notice and an opportunity for a hearing before PHMSA finds that a violation has occurred.

PHMSA Response

As noted above, the explicit use of the term ''violation'' in section 16 makes clear that a violation of a provision of the Federal pipeline safety laws, or a regulation or order prescribed under those laws, may serve as part of the factual basis for PHMSA determining that a condition or combination of conditions constitutes or is causing an imminent hazard. However, PHMSA does not interpret section 16 to mean that an emergency order would be used either to make an allegation of violation or a finding of violation, since those are addressed through other enforcement mechanisms, primarily notices of probable violation. Instead, PHMSA interprets the use of the term ''violation'' in the final rule to mean that *preliminary* findings of fact, conditions, potential violations, events, or practices that form the legal basis for determining the existence of an imminent hazard may be included as part of the factual basis for issuing an emergency order. PHMSA does not foresee that the factual statements contained in emergency orders will differ from the ''Preliminary Findings'' currently contained in corrective action orders, notices of proposed corrective action orders, and notices of proposed safety orders that serve as the agency's factual basis for declaring a hazardous condition or integrity threat and proposing or imposing corrective actions that operators need to take to address unsafe conditions.

To avoid any implication that emergency orders will be premised on an actual determination or finding of violations of the pipeline safety regulations, PHMSA has revised the introductory language in § 190.236(a) to remove the reference to ''violations'' of Federal pipeline safety laws as stated in the IFR. However, PHMSA is retaining it later in that same paragraph when used to describe the *contents* of an emergency order. This adheres to the statutory language in section 16 and makes a distinction between the alleged preliminary findings of fact that serve as the legal basis for issuing an order and what the order actually determines or requires.

PHMSA emphasizes that this revision does not affect its authority to issue an emergency order where a violation of the pipeline safety regulations may have occurred or to make *preliminary* findings of fact that describe the conditions giving rise to an imminent hazard.[3] Potential violations of Federal pipeline safety laws can result in unsafe conditions or practices that are so serious that they can serve to constitute part of the factual basis for issuing an emergency order. It would be unwise and contrary to the language of the statute to suggest that the use of the facts underlying potential violations is beyond PHMSA's authority. PHMSA also emphasizes that issuance of an emergency order does not preclude the agency from pursuing a violation through other means, including a notice of probable violation, separate from the emergency order process.

PHMSA is also correcting two typographical errors contained in this section. Neither change is substantive.

Summary of Public Comments to § 190.236(b), Emergency Orders, Consultation Requirement

AFPM commented that the IFR language does not include details concerning PHMSA's contemplated approach for carrying out the requirement in section 16 that PHMSA consult with appropriate Federal agencies, State authorities, and other entities knowledgeable in pipeline safety or operations before deciding whether to issue an emergency order. It requests that PHMSA provide clarification on its intended approach for such ''pre-order'' consultations, ''including categories of experts within State and Federal authorities [PHMSA] would expect to engage in pre-order consultation and consideration.''

INGAA requested clarification that section 16 actually requires PHMSA to consult with appropriate Federal and state agencies and ''other entities knowledgeable in pipeline safety or operations'' and that PHMSA's discretion was limited ''only as to what agencies are consulted and to what extent those agencies are consulted,'' not whether to consult at all. INGAA stated that the PIPES Act explicitly mandates that such consultations take place and further suggested that ''it would be appropriate, if not imperative, for the Administrator to consult with certain agencies in almost every conceivable situation.'' For example, INGAA suggested that for any emergency order issued to a Federal Energy Regulatory Commission (FERC)-regulated pipeline, FERC should be consulted at a minimum for potential impacts on energy reliability. Additionally, INGAA proposed that the Department of Energy be an appropriate consulting agency in some cases due to its overarching interest in energy policy and electric reliability.

PHMSA Response

PHMSA declines to adopt AFPM's suggestion that the agency provide

[3] This has traditionally been PHMSA's practice in issuing corrective action orders (CAOs), where the agency recites preliminary findings that describe what is currently known about the facts and circumstances surrounding an accident and that are subject to change as the accident investigation continues.

greater detail as to how and when PHMSA will engage in consultations with various agencies and stakeholders before issuing an emergency order. PHMSA believes that the statute clearly provides that PHMSA should engage in consultations with knowledgeable entities, including State and Federal agencies, before issuing an order, except that PHMSA has been granted the discretion to determine when consultations are ''appropriate,'' including the exigent circumstances upon which the emergency order is based. PHMSA believes it would be inefficient, inflexible, and contrary to the statutory language to identify specific procedures or entities that must be consulted in every instance, given the unique circumstances under which PHMSA is likely to consider issuance of an emergency order.

As suggested by commenters, PHMSA is amending the title to the subsection to clarify that it is not delineating a formal consultation process.

Summary of Public Comments To Adding § 190.236(e), Emergency Orders, Savings and Limitations

INGAA commented that PHMSA ''must'' add a paragraph (e) to § 190.236 to include a Savings and Limitations Clause, since a similar provision is contained in section 16. INGAA provided proposed language that followed the statutory language, stating that an emergency order under this section may not alter, amend, or limit the Secretary's obligations or provide authority to amend the CFR.

PHMSA Response

PHMSA rejects this suggestion as being unnecessary. The limitations and savings clause contained in section 16 is self-executing and does not require duplicate publication in the code of Federal regulations to be effective. Therefore, PHMSA is not adding a section to include a limitations and savings clause.

However, PHMSA is adding a new paragraph (e) to § 190.236, which is intended to address a different concern. The new paragraph (e) states that if an emergency order remains in effect for more than 365 days, PHMSA will make an assessment regarding whether the imminent hazard underlying the emergency order continues to exist. PHMSA did not receive any public comments suggesting this amendment, but it has decided to add the paragraph as an additional procedural protection to the petition process in § 190.237. Under this new provision, if PHMSA determines the imminent hazard does not continue to exist, PHMSA will rescind the order by notifing the operator in accordance with the procedures in § 190.236(d). If PHMSA determines the imminent hazard underlying the emergency order does continue to exist, PHMSA will initiate a rulemaking. Initating a rulemaking means that PHMSA will begin developing a rulemaking that will propose incorporating the actions mandated in the emergency order in the pipeline safety regulations. The proposed rulemaking will be published in the **Federal Register** and will provide the public an opportunity for notice and comment.

Summary of Public Comments to § 190.237, Petitions for Review

AFPM, INGAA, and ONEOK suggested that PHMSA include a provision allowing petitioners to modify or amend petitions for review after they have been filed. ONEOK and INGAA proposed that such amendments be permitted ''within the 30-day deadline for a final agency decision should new information become available that materially affects the review proceeding.'' INGAA stated that such an opportunity to amend a petition for review should not affect the 30-day deadline for reaching a final agency decision.

API/AOPL commented that PHMSA should clarify that if a petition for review is filed, PHMSA has the burden of proving the reasonableness of the order.

PHMSA Response

PHMSA accepts the commenters' suggestion to add language clarifying that petitions for review can be amended to provide new information materially affecting the review proceeding, provided such modifications or amendments are timely submitted. The determination whether to accept a modification or amendment will be made by the Associate Administrator where no formal hearing has been requested. In cases that have been referred to an ALJ for a formal hearing, the ALJ will determine whether to accept the new materials.

In response to API's comments about PHMSA's burden of proving the reasonableness of an emergency order, PHMSA has added a paragraph to clarify that the agency bears the burden of proving, by a preponderance of the evidence, that all the elements necessary to sustain an emergency order are present in a particular case, just as it does in other enforcement proceedings. However, a party asserting an affirmative defense bears the burden of proving the affirmative defense by a preponderance of the evidence. Accordingly, in this final rule, PHMSA is adding paragraph (g) to § 190.237 to explicitly define the burden of proof in emergency order cases. Current paragraphs (f) through (k) are redesignated as paragraphs (h) through (m).

Summary of Public Comments to § 190.237(a)(2), Petitions for Review, Requirements

Chaparral commented that § 190.237(a)(2) in the IFR requires a petition for review to specifically identify which portions of the emergency order the petition seeks to either ''amend or rescind.'' It proposed that this language be modified to match the statutory language, which states that PHMSA must provide an opportunity for an owner or operator to show why an emergency order should be ''modified'' or ''terminated.''

PHMSA Response

PHMSA adopts this suggestion and has revised § 190.237(a)(2) to use the phrase ''modified or terminated'' to be consistent with the statutory language.

Summary of Public Comments to §§ 190.237(a)(3) and 190.237(c)(1), Petitions for Review, Right to Formal Hearing

AGA, AFPM, API/AOPL, and INGAA commented that PHMSA should remove the provision requiring that each petition containing a request for a formal hearing must state ''the material facts in dispute giving rise to the request for a hearing,'' as well as the provision providing the Associate Administrator with the discretion to deny a formal hearing request if he finds that the petition for review fails to state material facts in dispute. INGAA expressed concern that denying a formal hearing could impinge on an operator's ability to develop an evidentiary record before an independent administrative law judge. This was of particular concern because an emergency order could potentially have far-reaching consequences on energy reliability, continuity of service, and the economy as a whole. The commenters stated that § 190.237(c)(1) should be modified to make clear that ''the Associate Administrator does not have the discretion to unilaterally deny an affected entity the opportunity to pursue a formal hearing.''

AFPM concurred that a petition should not be denied based simply on a failure to state materials facts because if PHMSA were to issue an emergency order in the aftermath of an accident, the facts underlying the incident would

likely be unknown, or only partially known, even by the operator, during an emergency. AFPM stated that petitioners subject to an emergency order who lack access to all of the underlying facts would need to have the opportunity of a formal hearing to engage in discovery and to exercise other statutorily-required processes.

PHMSA Response

PHMSA has adopted the commenters' suggestion that the Associate Administrator refer all petitions that request a formal hearing to an ALJ, regardless of whether or not there are material facts in dispute.

PHMSA recognizes the commenters' concern that, because emergency orders may be issued without prior notice or an opportunity for a hearing, it is important that affected entities be given the chance to develop an evidentiary record before an ALJ. Further, PHMSA notes that an ALJ has broad authority to manage any challenges that may arise during formal hearings, including discovery, evidence, and the consolidation of petitions, all of which must be resolved on the expedited schedule required under the statute. Therefore, for the reasons cited above, PHMSA is modifying the language in 49 CFR 190.237(c) to refer any petition that requests a formal hearing to an ALJ.

Summary of Public Comments to § 190.237(c)(2), Petitions for Review, Associate Administrator for Pipeline Safety Responsibilities, No Formal Hearing Requested

API/AOPL requested clarification of the procedures to be used to resolve a petition for review where the petitioner has not requested a formal hearing or if the Associate Administrator denies a petitioner's request to pursue the ALJ process. They suggest that even in the absence of a formal hearing before an ALJ, a petitioner must be afforded the right to develop an adequate record, including the right to answer the agency's response to a petition for review.

PHMSA Response

As noted above, PHMSA has accepted the commenters' suggestion to eliminate the authority of the Associate Administrator to deny a petitioner's request for a formal hearing. As for those situations where no formal hearing has been requested, these petitions will be reviewed on the written record, just as is currently done for other enforcement proceedings where no informal hearing has been requested. In both cases, the final agency decision will be rendered by the Associate Administrator.

The commenters have suggested that petitioners in non-hearing cases need a greater opportunity to develop a full evidentiary record. The PIPES Act mandates that PHMSA develop a review process generally in conformance with § 109.19 of this title. As such, § 190.237 must, to the greatest extent practicable, remain consistent with these regulations. Section 109.19(b) provides that an attorney designated by the Office of Chief Counsel, PHMSA, may file and serve a response to a petition for review, but does not include a right by the petitioner to ''reply,'' as suggested by the commenters. PHMSA believes, given the timeframes established by the review process, that the most practicable resolution with respect to the comment is for petitioners to take advantage of the provisions laid out in the IFR. Safeguards already exist to ensure a petitioner's ability to develop an adequate record within the short time frames provided in the statute by amending its petition or seeking reconsideration of the ALJ's report and recommendation, or filing for judicial review in a district court of the United States. Given that emergency orders can only be issued upon a showing that an imminent hazard exists, the administrative process for reviewing an emergency order must necessarily proceed on an expedited basis.

Summary of Public Comments to § 190.237(c)(3), Petitions for Review, Associate Administrator for Pipeline Safety Responsibilities, Consolidation

Several commenters objected to the consolidation provision in § 190.237(c)(3). AFPM requested that this provision, which allows the Associate Administrator to consolidate petitions for review that share common issues of law or fact, be removed entirely from the final rule. It commented that the Associate Administrator should not be permitted to consolidate petitions unless each petitioner agrees to consolidation, since the right to petition for review is an individual right held by each affected entity. AFPM requested that if the provision were not removed, then PHMSA should clarify the meaning of the phrase ''substantially similar'' orders, as used in the IFR preamble. Finally, it offered the alternative that if this provision were removed from the final rule, petitioners could then ''elect to consolidate their petitions through consent provided to the ALJ,'' who could then consolidate ''genuinely similar petitioners.''

API/AOPL commented that the final rule should permit only ''like'' petitions to be consolidated, *i.e.,* those that seek resolution pursuant to the same *procedural process.* It stated that if a petitioner seeks review of an emergency order under the more formal ALJ process, then PHMSA should not then ''be able to deny that right'' by consolidating the petition with others who seek resolution without a formal hearing. It suggested that if a petitioner elects to forego a hearing and does not wish to expend the resources required under the ALJ process, then it should not be required to do so if its case were consolidated with others requesting a formal hearing. API/AOPL stated that all petitioners should have the right to decide individually if they wish to pursue review under (c)(1) or (c)(2), and that such choice was necessary to protect a petitioner's ability to elect the appropriate procedural option for itself.

INGAA commented that PHMSA should explicitly state in its regulations that where multiple petitions for review are consolidated, the 30-day expiration period for the emergency order should be controlled by the date that the first petition is filed. It also suggested that the Associate Administrator should have the discretion to de-consolidate a proceeding if circumstances warrant since it ''is easily foreseeable that facts potentially altering the review proceeding may arise after petitions for review have been consolidated.''

PHMSA Response

PHMSA believes it is reasonable and practical to permit the Associate Administrator to consolidate petitions for review. Given the potential number of petitioners and the urgency of reviewing multiple petitions, the best use of public resources may be to consolidate substantially similar petitions so that such petitions can be processed efficiently. If a petition is substantially similar to other petitions filed under the same emergency order and is consolidated, the petition is still afforded a full review. Each petitioner in a consolidated proceeding retains the ability to protect its interests, whether in a formal hearing or not, as neither proceeding is limited to considering only one issue. It is in the best interests of the public and judicial economy for PHMSA to have the discretion to require that substantially similar petitions be resolved in a single proceeding.

PHMSA also sees no need to clarify the term ''substantially similar,'' as it is applied to multiple petitions for review. The IFR clearly states that ''substantially similar'' means where more than one

petition includes common issues of fact or law.

As for the suggestion by API/AOPL that PHMSA should permit only ''like'' petitions to be consolidated, *i.e.,* those that seek resolution pursuant to the same *procedural process,* the agency declines to accept this suggestion. If one petitioner files a petition that does not request a formal hearing and another one does, the commenters contend that, if the former ''does not wish to expend the resources required under the ALJ process, then it should not be required to do so.'' PHMSA believes there would be no such requirement. If a non-hearing petition is consolidated with a hearing petition that are considered together by an ALJ, the non-hearing petitioner would not be forced to participate in the formal hearing process. Its petition would still be considered as part of the consolidated case, including any report and recommendation issued by the ALJ, and would still be considered and decided by the Associate Administrator through a final decision on the consolidated case. The substantive claims of the non-hearing petitioner would be fully considered and decided, just the same as they would be if no hearing were held at all. Such a process would also be more efficient and avoid a plethora of hearings and decisions on multiple petitions.

PHMSA also declines to adopt the suggestion that where multiple petitions for review have been consolidated, the 30-day expiration period for the emergency order should be controlled by the date that the first petition is filed. PHMSA believes such language is unnecessary because § 190.237(l) already makes clear that if a decision has not been reached by the Associate Administrator on a petition for review within 30 days, absent a written finding by the Administrator that the emergency condition continues to exist, the emergency order will cease to be effective. This means that if multiple petitions have been filed and consolidated, the date the first petition was filed will serve to start the 30-day review period and the emergency order will expire 30 days thereafter unless the Administrator finds that the emergency continues to exist.

Finally, PHMSA accepts INGAA's suggestion that § 190.237(c)(3) be amended to give the Associate Administrator the discretion to de-consolidate a proceeding. The trade organization contends that factual circumstances could potentially change after multiple petitions have been consolidated that would warrant de-consolidation by the Associate Administrator. In a proceeding where a non-hearing petition has been consolidated with a hearing petition and assigned to an ALJ, the ALJ would have the discretion to handle these petitions in the most efficient manner, including possible de-consolidation. Where the Associate Administrator has consolidated two non-hearing petitions, the final rule gives him the discretion to de-consolidate the two cases if changed circumstances warrant separation. PHMSA believes this would not unduly delay the process, which has been intentionally streamlined to provide expedited resolution of multiple potential petitions.

Summary of Public Comments to § 190.237(c)(4), Petitions for Review, Associate Administrator for Pipeline Safety Responsibilities, Agency Authority To Request a Formal Hearing

The AFPM, API/AOPL, and INGAA commented that § 190.237(c)(4), which gives the Associate Administrator the right to request a formal hearing, should be removed from the final rule. They state that section 16 does not provide PHMSA with this authority if a petitioner has not requested a formal hearing. In the alternative, they request (1) clarification of this authority (including the process by which the decision is made); (2) clarification on the standard by which the decision is made; (3) the circumstances that may give rise to such agency action; and (4) how it can be appealed. API/AOPL and INGAA stated that if entities aggrieved by an emergency order choose to proceed without pursuing a formal ALJ hearing, then it would be counter to the interests of administrative economy for the agency to impose a more formal process that would require a petitioner to incur the expenditure of time and resources needed for a formal hearing.

PHMSA Response

PHMSA accepts the commenters' suggestion to remove § 109.237(c)(4). However, PHMSA has also clarified the consolidation provision to make clear that the Associate Administrator may consolidate a petition that does not include a formal hearing request with one that does. The provision permitting the Associate Administrator to require a formal hearing in such circumstances, even where a petitioner has not requested one, is a reasonable and practical case-management tool that allows multiple petitions to be heard together and is not precluded by the PIPES Act. Where there is a similar set of facts in dispute and multiple petitions, allowing an ALJ to conduct a single formal hearing can appropriately conserve agency resources. The use of the ALJ can also serve to protect the interests of all petitioners in such circumstances by ensuring that there is a full examination of the facts before PHMSA takes final agency action.

Summary of Public Comments to § 190.237(d), Petitions for Review, Formal Hearings

Chaparral suggested that the same formal hearing process should be used for both emergency orders and CAOs, since PHMSA can issue both without prior notice or hearing.[4] Several industry groups also expressed a concern about a lack of procedures in the IFR limiting *ex parte* communications between PHMSA and the presiding ALJ. AFPM, API/AOPL, and INGAA commented that a prohibition on *ex parte* communications (*i.e.,* private contacts between one party and the adjudicator or other persons involved in preparing a final decision) between one party and the presiding ALJ should be included in the final rule. AFPM suggested that *ex parte* prohibitions should begin with the filing of a petition. INGAA stated that *ex parte* rules should apply to any discussion between the ALJ and the Administrator, Associate Administrator, or any other PHMSA personnel acting on behalf of the agency with regard to the merits of a petition for review. INGAA requested, on the other hand, that *ex parte* rules should be clear so as not to foreclose ''continued discussions between the affected operators and the Administrator, Associate Administrator, or PHMSA personnel acting on behalf of the Agency.''

PHMSA Response

PHMSA declines to accept Chaparral's suggestion that the formal hearing process be applied to CAOs. First, such a proposed change is beyond the scope of this rulemaking. Second, passage of section 16 is the only time Congress has authorized an affected entity to request a formal hearing in an enforcement action brought by PHMSA, presumably because emergency orders potentially can have much broader impacts than CAOs and other enforcement actions directed against a single operator.

PHMSA also declines to accept the suggestion from AFPM, API/AOPL, and INGAA that language be added to

[4] The company's comment states: ''We believe that a § 554 hearing should be afforded in all instances under Subpart 190 where PHMSA is afforded the authority to take action prior to providing the operator notice and an opportunity to be heard. Under this approach, formal hearing regulations would apply not only to [emergency orders] but also to CAOs.''

paragraph (d) to prohibit *ex parte* communications in these formal hearings. The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* already provides well-established procedures governing *ex parte* communications in formal proceedings on the record (5 U.S.C. 557(d)(1)), including those established under this final rule. Furthermore, these proceedings are also subject to standards established in 14 CFR part 300, including §§ 300.1, 300.2 and 300.4, for rules of conduct in formal proceedings on the record. These provisions apply to all ALJs in the Office of Hearings and will be followed for all formal hearings brought under these regulations.

However, in this paragraph of the final rule, PHMSA is making a minor clerical revision to subparagraph (d)(2) to add the word ''statutes'' which was inadvertently left out of the IFR regulatory text.

Summary of Public Comments to § 190.237(g), Petitions for Review, Report and Recommendation

Chaparral commented that the ALJ's report and recommendation should be considered a final agency action subject to judicial review. Chaparral expressed concern that the IFR was unclear whether an aggrieved party that elects not to file a petition for reconsideration could still seek judicial review of the emergency order. Chaparral argued that by making the ALJ report and recommendation a final agency action subject to judicial review, PHMSA would remove any uncertainty about a petitioner's right to seek judicial review without first filing a petition for reconsideration. The commenter believed that such a change would prevent a denial of due process.

PHMSA Response

The PIPES Act mandates that PHMSA develop a review process consistent with § 109.19(g) of this title, to the greatest extent practicable and not inconsistent with section 16. This particular provision in the IFR conforms to the hazmat procedures, whereby the Associate Administrator issues the final agency decision upon consideration of the ALJ's report and recommendation, if there is one. The IFR provides that a petitioner aggrieved by an ALJ report and recommendation may file a petition for reconsideration with PHMSA's Associate Administrator, who must then issue a final agency decision within 30 days of receiving the original petition for review. If a petitioner elects to forego the petition for reconsideration, the Associate Administrator must still issue a decision within 30 days of receiving the petition for review, and the petitioner may seek judicial review from the Associate Administrator's decision. Therefore, a petitioner's right to seek judicial review of final agency action on an emergency order is assured, regardless of whether or not the petitioner has sought reconsideration of the ALJ's report and recommendation.

However, in the regulatory text PHMSA has made a minor modification to the language of this paragraph to clarify that the ALJ issues the report and recommendation to the Associate Administrator, whose decisions are considered final agency actions subject to judicial review.

Summary of Public Comments to § 190.237(h), Petitions for Review, Petition for Reconsideration

API/AOPL and INGAA commented that to allow owners and operators subject to an emergency order sufficient time to seek reconsideration, the deadline for issuing a report and recommendation be changed from 25 days to 21 days. They suggested that petitioners be given additional time to consider and submit a petition for reconsideration. The commenters suggested that reducing the deadline to 21 days would allow for a petition for reconsideration to be submitted within 3 days instead of 1 day, and also allow PHMSA's response to the petition for reconsideration be submitted within 3 days instead of 1 day.

PHMSA Response

Section 16 of the PIPES Act mandates that PHMSA, in issuing the final rule, must develop a process that ''contains the same procedures'' as subsections (d) and (g) of the Hazardous Materials Regulations. Subsection (g) of those regulations specifies that the ALJ's report and recommendation must ''be issued no later than 25 days after receipt of the petition for review. . .'' Since this is one of the provisions that must be identical to the Hazardous Materials Regulations, PHMSA does not have the discretion to reduce the deadline for an ALJ to issue a report and recommendation from 25 to 21 days, as the commenters suggest. The timeline established in this final rule is therefore the same as subsection (g) of the Hazardous Materials Regulations.

In the final rule, PHMSA has modified the language of this paragraph to clarify that a petitioner ''affected and aggrieved'' by the ALJ's report and recommendation may file a petition for reconsideration, and it has also corrected non-substantive typographical errors. PHMSA has also extended the deadline for submitting a petition for reconsideration by allowing a petitioner to request reconsideration up until the 27th day after a petition for review has been filed. This means that in the event an ALJ report and recommendation is issued early (*i.e.,* before the 25-day deadline), then the petitioner gets additional time to file a petition for reconsideration. Likewise, if the ALJ report is issued on or after the twenty-fifth day, a petitioner will now have two days, rather than one, to request reconsideration. This additional time was gained by eliminating the agency's opportunity to respond to the petition for reconsideration. PHMSA believes that the agency does not need an opportunity to respond to a petition for reconsideration since the Associate Administrator's decision will take into account the contents of the petition and respond through the final agency action.

Summary of Public Comments to § 190.237(i), Petitions for Review, Judicial Review

Chaparral raised concerns about the process for judicial review of an emergency order or a continuing-hazard determination. It stated that all orders issued under 49 U.S.C. chapter 601, including the issuance of a CAO prior to notice and an opportunity to a hearing, may currently be appealed directly to a circuit court of appeals, but under the IFR, judicial review of an emergency order lies with a Federal district court. Given the similarities between the two types of enforcement orders, Chaparral suggested that judicial review of an emergency order be changed to a Federal circuit court.

PHMSA Response

Chaparral is correct that section 16 of the PIPES Act provides that an aggrieved owner or operator may seek review of an emergency order in a district court of the United States. While 49 U.S.C. 60119(a) generally provides that the courts of appeals have jurisdiction over petitions for the review of PHMSA orders issued under Chapter 601 of Title 49, the later-enacted section 16 of the PIPES Act specifically provides that judicial review of emergency orders must be sought in a district court. PHMSA has therefore retained the language from section 16 in the final rule.

Summary of Public Comments to § 190.237(j), Petitions for Review, Expiration of Emergency Order

AGA and INGAA requested clarification that PHMSA may lift or remove an emergency order from one or more owners/operators, while leaving it in effect as to others. They stated that if

certain affected operators rectify the imminent hazard more quickly than others, they should be able to petition for release from the emergency order.

Similarly, API/AOPL requested clarification that PHMSA will provide expedited relief from an emergency order if warranted by unique circumstances, such as the need to address unintended consequences of an order that has had a material impact on one or more operators. They requested that PHMSA provide clarification that if unique circumstances arise under an emergency order, a pipeline owner or operator would be permitted to file a petition for expedited relief from an emergency order, and that nothing in the regulations precludes the granting of such relief.

Chaparral commented that four specific changes should be made to § 190.237(j): (1) PHMSA should explain the limited effect and impact of a ''continuing hazard determination'' under various scenarios, depending on whether or not a petition for review has been filed and disposed of within 30 days; (2) PHMSA should limit the time-frame during which a ''continuing hazard determination'' can be made to the 30-day period following the filing of a petition for review; (3) PHMSA should clarify what decision PHMSA must make within the 30-day period; and (4) PHMSA should explain what effect, if any, a ''continuing hazard determination'' would have on a pending proceeding to resolve a petition for review.

Chaparral also requested clarification of the judicial review process for an emergency order. It presented a hypothetical situation whereby the Administrator might deny a petition for reconsideration from the ALJ's report and recommendation yet also issue a separate order finding that an imminent hazard continues to exist past the initial 30-day period. According to the commenter, ''§ 190.237(i) appears to afford the aggrieved party two separate appeals involving the same [emergency order]: one for judicial review of a final agency decision under § 190.237(h)(2), and one for judicial review of a continuing hazard determination under § 190.237(j).'' In addition, Chaparral stated that there is nothing to prevent an aggrieved party from appealing a determination made under § 190.237(j) to one Federal district court and appealing the other final agency decision to an entirely different Federal district court.

PHMSA Response

PHMSA clarifies that nothing in the final rule precludes PHMSA from granting expedited relief from an emergency order where PHMSA determines that the imminent hazard has abated with respect to a particular operator or group of operators, or from modifying the emergency order to grant partial relief where warranted by changed circumstances. An emergency order will contain procedures by which individual owners and operators may file petitions for review requesting that PHMSA terminate the emergency order as to them.

The Associate Administrator's decision on a petition for review is final agency action, subject to judicial review. If the Associate Administrator has not disposed of a petition for review within 30 days after it is filed, and the Administrator determines, in writing, that the imminent hazard providing a basis for the emergency order continues to exist, the petitioner may seek judicial review of the emergency order at that time, or wait to seek judicial review of the Associate Administrator's decision, but not both. The regulatory text provides that a petitioner may seek judicial review of an emergency order after a decision by the Associate Administrator on the petition *or* the issuance of a written determination by the Administrator.

As for Chaparral's other requested changes and questions, PHMSA has amended paragraph (l) to make clear that if no petition for review is filed, then the emergency order will continue in effect until PHMSA makes a written determination that the imminent hazard no longer exists and terminates the order. PHMSA declines to modify that same paragraph to specify the time frame during which a ''continuing hazard determination'' can be made since the current language makes clear that such a finding must be made during the 30-day period following the filing of a petition for review.

The agency does clarify, however, that in all instances, the Associate Administrator must issue a decision on a petition for review of an emergency order within 30 days, and thus a petition for reconsideration of an ALJ's report and recommendation does not extend this deadline. If the Associate Administrator does not reach a decision on the petition for review within 30 days, then the emergency order will expire, unless the Administrator makes a determination, in writing, that an imminent hazard continues to exist. If the Administrator determines that an imminent hazard continues to exist, and issues this opinion in writing to prevent the expiration of an emergency order, it would have no effect on the Associate Administrator's decision on a pending petition. The Associate Administrator's decision may still modify or terminate an emergency order.

PHMSA is also making a minor clerical correction to this paragraph to remove language regarding the ALJ not disposing of the petition for review. This was a typographical error.

Additional Public Comment

After the comment period had closed, AFPM filed a supplemental comment as part of its larger response to DOT's Transportation Infrastructure docket, see DOT–OST–2017–0057, which was published in the **Federal Register** on June 8, 2017. 82 FR 26734. AFPM reiterated several of its earlier comments in light of the DOT Request for Comments and the policy considerations contained in Executive Orders 13771, 13777, and 13873. AFPM suggested that PHMSA should consider any potential impacts to ongoing or planned pipeline infrastructure projects prior to issuing an emergency order.

PHMSA Response

PHMSA notes that section 16 does not expand PHMSA's general authority to regulate pipeline transportation and pipeline facilities but merely provides a means by which the agency may take immediate action when, in extraordinary circumstances, an imminent safety hazard exists that involves multiple owners or operators of gas or hazardous liquid pipeline facilities. The statute requires that the emergency order be narrowly tailored to abate the imminent hazard. Additionally, the regulations require PHMSA to consider the impacts and consult, as the Administrator determines appropriate, with appropriate Federal agencies, State agencies, and other entities knowledgeable in pipeline safety or operations. These protections are designed to minimize potential adverse impacts, including impacts on planned and ongoing pipeline projects.

IV. Section-by-Section Analysis

PHMSA is including a discussion about each section of the final rule, not just the amendments to the IFR, for ease of comprehension and clarity. Below is a summary and analysis of the regulatory provisions in the final rule.

Section 190.3 Definitions

This section contains a comprehensive set of definitions for part 190. PHMSA adds a new definition for ''formal hearing'' and revises the definitions for ''Emergency order'' and ''imminent hazard.''

Section 190.5 Service

Paragraph (a) is revised to remove the exception of personal service for emergency orders.

Section 190.236 Emergency Orders

PHMSA revises the language of § 190.236(a) to remove the reference to ''violation'' in the introductory language serving as the basis for issuing an emergency order.

PHMSA is making a non-substantive change to paragraph (b) so that the regulatory text concerning consultation tracks the statutory text in section 16.

Paragraph (c) is amended to conform with the statutory requirement, by adding the phrase ''as appropriate'' to the regulatory text regarding consultation.

Paragraph (d) is amended to provide that PHMSA will personally serve an emergency order on pipeline operators subject to the order, by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt.

Paragraph (e) is added to establish the steps PHMSA will take if an emergency order remains in effect for more than 365 days.

Section 190.237 Petitions for Review

Paragraph (a)(2) is amended to use the term ''modified or terminated'' rather than ''amended or rescinded'' to describe the relief sought by a petitioner. These terms are consistent with the introductory language in paragraph (a).

Paragraph (b) is added to allow a petitioner to modify its petition for review to provide new information that materially affects the review proceeding. The Associate Administrator or the presiding ALJ in a formal hearing will determine whether to accept the new materials.

Paragraph (d)(1) is amended to provide that the Associate Administrator will accept all requests for formal hearings and forward them to the DOT Office of Hearings.

Paragraph (d)(3) is amended to require that consolidation occur before a formal hearing commences, to clarify that the Associate Administrator may consolidate a petition that did not request a formal hearing with one or more petitions that have been forwarded to the DOT Office Hearings for a formal hearing, and to de-consolidate multiple petitions that have not requested a formal hearing if he determines that there has been a change in circumstances that warrants separation.

Paragraph (f) is redesignated as paragraph (g) and is revised to explain that PHMSA has the burden of proof, except in the case of an affirmative defense asserted by a petitioner.

Paragraphs (f) through (k) are redesignated as (g) through (l).

Paragraph (h)(2)(iii) is edited to correct the mailing address of the DOT Office of Hearings.

Paragraph (j) is added to provide additional time for a petitioner to file a petition for reconsideration of an administrative law judge's report and recommendation, permitting five days to file for reconsideration if the report and recommendation is issued 20 days or less after the petition for review was filed with PHMSA or two days to file for reconsideration if the report and recommendation is issued more than 20 days after the petition for review was filed.

Paragraph (l) is revised to provide clarity on when an emergency order expires, and to state that if the Associate Administrator has not issued a decision within 30 days of a petition for review, the emergency order shall expire unless the Administrator determines, in writing, that the imminent hazard providing a basis for the emergency order continues to exist.

IV. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Final Rule

PHMSA's general authority to publish this final rule and prescribe pipeline safety regulations is codified at 49 U.S.C. 60101, *et seq.* Section 16 of the PIPES Act authorizes the Secretary of Transportation to establish procedures for the issuance of emergency orders that will be used to address an unsafe condition or practice, or combination of unsafe conditions or practices, that pose an imminent hazard to public health and safety or the environment. The Secretary has delegated the responsibility to exercise this authority to the Administrator. *See* 49 CFR 1.97(a).

B. Executive Order 12866, Executive Order 13563, and DOT Policies and Procedures

This final rule is a significant regulatory action under Executive Order 12866, 58 FR 51735, and the Regulatory Policies and Procedures of the Department of Transportation. The rule was therefore reviewed by the Office of Management and Budget. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.,* the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

Executive Orders 12866 and 13563 require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' This final rule solely affects agency enforcement procedures to implement the emergency-order provisions of the law, and therefore this rulemaking results in no additional burden or compliance costs to industry. However, under circumstances warranting that PHMSA issue an emergency order, there may be incremental compliance actions and costs to operators and benefits related to the immediate lessening of the imminent risks of death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment across the entirety of affected populations and environments. In the case of existing regulatory provisions, costs and benefits are attributable to the original rulemaking.

Executive Order 13771

This proposed rule is not subject to the requirements of Executive Order 13771 because this rule results in no more than *de minimis* costs.

Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism;'' 64 FR 43255; Aug. 10, 1999). This final rule does not introduce any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Further, this final rule does not have an impact on federalism that warrants preparation of a federalism assessment.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 60101 *et seq.,* requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule will not have a significant impact on a substantial number of small entities. Because this rule does not directly impact any entity, PHMSA determined that this final rule will not have a significant impact on a substantial number of small entities.

D. Paperwork Reduction Act

PHMSA has analyzed this final rule in accordance with the Paperwork Reduction Act of 1995 (PRA; Pub. L. 96–511; Dec. 11, 1980). The PRA requires Federal agencies to minimize paperwork burden imposed on the American public by ensuring maximum utility and quality of Federal information, ensuring the use of information technology to improve Government performance, and improving the Federal government's accountability for managing information collection activities. This final rule contains no new information collection requirements subject to the PRA. In the IFR, PHMSA requested comment on the potential paperwork burdens associated with this rulemaking. PHMSA received no comments related to paperwork burdens associated with the emergency order provisions or other potential information requests related to them.

E. Executive Order 13175

PHMSA has analyzed this final rule according to the principles and criteria in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments;'' 65 FR 67249; Nov. 9, 2000). Because this final rule will not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

F. Executive Order 13211

This final rule is not a significant energy action under Executive Order 13211 (66 FR 28355; May 18, 2001). It is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant, adverse effect on the supply, distribution, or use of energy. Furthermore, this final rule has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

G. Unfunded Mandates Reform Act of 1995

This final rule would not impose unfunded mandates under the Unfunded Mandates Act of 1995 (Pub. L. 104–4; Dec. 4, 1995). The final rule would not result in annual costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector, and is the least burdensome alternative to achieve the objective of the final rule.

H. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires that Federal agencies analyze proposed actions to determine whether an action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order Federal agencies to conduct an environmental review considering (1) the need for the proposed action (2) alternatives to the proposed action (3) probable environmental impacts of the proposed action and alternatives and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

1. Purpose and Need

Congress enacted the PIPES Act, in part, to address safety issues affecting multiple or all owners/operators of gas or hazardous liquid pipeline facilities

2. Alternatives

Because this final rule addresses a congressional mandate, PHMSA has limited latitude in defining alternative courses of action. The option of taking no action would be both inconsistent with Congress' direction and undesirable from the standpoint of safety and enforcement. Failure to implement the new authority would continue PHMSA's inability to address conditions or practices constituting an imminent risk of death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment.

3. Analysis of Environmental Impacts

There are no direct environmental impacts to analyze. However, the issuance of an emergency order represents a reduction in imminent risk of death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment that cannot be lessened timely enough through a formal proceeding begun to lessen the risk.

I. Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the United Agenda.

J. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement published in the **Federal Register**, (*see* 65 FR 19477–78; April 11, 2000), or you may visit *http://www.regulations.gov.*

List of Subjects in 49 CFR Part 190

Emergency orders; Administrative practice and procedures.

For the reasons discussed in the preamble, the interim rule amending 49 CFR part 190, which was published on October 14, 2016, (81 FR 70980) is adopted as a final rule with the following amendments:

PART 190—PIPELINE SAFETY PROGRAMS AND RULEMAKING PROCEDURES

■ 1. The authority citation for Part 190 continues to read as follows:

Authority: 33 U.S.C. 1321(b); 49 U.S.C. 60101 *et seq.;* 49 CFR 1.97; Pub. L. 114–74, section 701; Pub. L. No: 112–90, section 2; Pub. L. 101–410, sections 4–6.

■ 2. Amend § 190.3 as follows:
■ a. Revise the definitions of ''Emergency order'' and ''Imminent hazard'' in alphabetical order; and
■ b. Add the definition of ''Formal hearing'' in alphabetical order.

The revisions and addition read as follows:

§ 190.3 Definitions.

* * * * *

Emergency order means a written order issued in response to an imminent hazard imposing restrictions, prohibitions, or safety measures on owners and operators of gas or hazardous liquid pipeline facilities, without prior notice or an opportunity for a hearing.

Formal hearing means a formal review in accordance with 5 U.S.C. 554, conducted by an administrative law judge.

* * * * *

Imminent hazard means the existence of a condition relating to a gas or hazardous liquid pipeline facility that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of such death, illness, injury or endangerment.

* * * * *

■ 3. In § 190.5, revise paragraph (a) to read as follows:

§ 190.5 Service.

(a) Each order, notice, or other document required to be served under

this part, will be served personally, by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt.

* * * * *

■ 4. Revise § 190.236 to read as follows:

§ 190.236 Emergency orders: Procedures for issuance and rescision.

(a) *Determination of imminent hazard.* When the Administrator determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, constitutes or is causing an imminent hazard, as defined in § 190.3, the Administrator may issue or impose an emergency order, without advance notice or an opportunity for a hearing, but only to the extent necessary to abate the imminent hazard. The order will contain a written description of:

(1) The violation, condition, or practice that constitutes or is causing the imminent hazard;

(2) Those entities subject to the order;

(3) The restrictions, prohibitions, or safety measures imposed;

(4) The standards and procedures for obtaining relief from the order;

(5) How the order is tailored to abate the imminent hazard and the reasons the authorities under 49 U.S.C. 60112 and 60117(l) are insufficient to do so; and

(6) How the considerations listed in paragraph (c) of this section were taken into

account.

(b) *Consultation.* In considering the factors under paragraph (c) of this section, the Administrator shall consult, as the Administrator determines appropriate, with appropriate Federal agencies, State agencies, and other entities knowledgeable in pipeline safety or operations.

(c) *Considerations.* Prior to issuing an emergency order, the Administrator shall consider the following, as appropriate:

(1) The impact of the emergency order on public health and safety;

(2) The impact, if any, of the emergency order on the national or regional economy or national security;

(3) The impact of the emergency order on the ability of owners and operators of pipeline facilities to maintain reliability and continuity of service to customers; and

(4) The results of any consultations with appropriate Federal agencies, State agencies, and other entities knowledgeable in pipeline safety or operations.

(d) *Service.* The Administrator will provide service of emergency orders in accordance with § 190.5 to all operators of gas and hazardous liquid pipeline facilities that the Administrator reasonably expects to be affected by the emergency order. In addition, the Administrator will publish emergency orders in the **Federal Register** and post them on the PHMSA website as soon as practicable upon issuance. Publication in the **Federal Register** will serve as general notice of an emergency order. Each emergency order must contain information specifying how pipeline operators and owners may respond to the emergency order, filing procedures, and service requirements, including the address of DOT Docket Operations and the names and addresses of all persons to be served if a petition for review is filed.

(e) *Rescission.* If an emergency order has been in effect for more than 365 days, the Administrator will make an assessment regarding whether the unsafe condition or practice, or combination of unsafe conditions and practices, constituting or causing an imminent hazard, as defined in § 190.3, continues to exist. If the imminent hazard does not continue to exist, the Administrator will rescind the emergency order and follow the service procedures set forth in § 190.236(d). If the imminent hazard underlying the emergency order continues to exist, PHMSA will initiate a rulemaking action as soon as practicable.

■ 5. Revise § 190.237 to read as follows:

§ 190.237 Emergency orders: Petitions for review.

(a) *Requirements.* A pipeline owner or operator that is subject to and aggrieved by an emergency order may petition the Administrator for review to determine whether the order will remain in place, be modified, or be terminated. A petition for review must:

(1) Be in writing;

(2) State with particularity each part of the emergency order that is sought to be modified or terminated and include all information, evidence and arguments in support thereof;

(3) State whether the petitioner requests a formal hearing in accordance with 5 U.S.C. 554, and, if so, any material facts in dispute; and,

(4) Be filed and served in accordance with paragraph (h) of this section.

(b) *Modification of petitions.* A petitioner may modify its petition for review to provide new information that materially affects the review proceeding and that is timely submitted. Where the petitioner has not requested a formal hearing, the Associate Administrator will make the determination whether to accept the new information. Where a case has been assigned for a formal hearing, the presiding administrative law judge will determine whether to accept the new information.

(c) *Response to the petition for review.* An attorney designated by the Office of Chief Counsel may file and serve, in accordance with paragraph (h) of this section, a response to the petition, including appropriate pleadings, within five calendar days of receipt of the petition by the Chief Counsel.

(d) *Associate Administrator's responsibilities.*—(1) *Formal hearing requested.* Upon receipt of a petition for review that includes a formal hearing request under this section, the Associate Administrator will, within three days after receipt of the petition, assign the petition to the Office of Hearings, DOT, for a formal hearing.

(2) *No formal hearing requested.* Upon receipt of a petition for review that does not include a formal hearing request, the Associate Administrator will issue an administrative decision on the merits within 30 days of receipt of the petition for review. The Associate Administrator's decision constitutes the agency's final decision.

(3) *Consolidation.* If the Associate Administrator receives more than one petition for review and they share common issues of law or fact, the Associate Administrator may consolidate the petitions for the purpose of complying with this section, provided such consolidation occurs prior to the commencement of a formal hearing. The Associate Administrator may reassign a petition that does not request a formal hearing to the Office of Hearings, DOT, provided the petition otherwise meets the requirements for consolidation. If the Associate Administrator has consolidated multiple petitions that do not request a formal hearing, he may de-consolidate such petitions if there has been a change in circumstances that, in his discretion, warrant separation for the purpose of rendering a final decision.

(e) *Formal Hearings.* Formal hearings must be conducted by an administrative law judge assigned by the chief administrative law judge of the Office of Hearings, DOT. The administrative law judge may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by the appropriate statutes and agency regulations (*e.g.,* 49 U.S.C. 60117 and 49 CFR 190.7);

(3) Adopt the relevant Federal Rules of Civil Procedure for the United States District Courts for the procedures

governing the hearings, when appropriate;

(4) Adopt the relevant Federal Rules of Evidence for United States Courts and Magistrates for the submission of evidence, when appropriate;

(5) Take or cause depositions to be taken;

(6) Examine witnesses at the hearing;

(7) Rule on offers of proof and receive relevant evidence;

(8) Convene, recess, adjourn or otherwise regulate the course of the hearing;

(9) Hold conferences for settlement, simplification of the issues, or any other proper purpose; and

(10) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of an issue raised.

(f) *Parties.* The petitioner may appear and be heard in person or by an authorized representative. PHMSA will be represented by an attorney designated by the Office of Chief Counsel.

(g) *Burden of proof.* Except in the case of an affirmative defense, PHMSA shall bear the burden of proving, by a preponderance of the evidence, the validity of an emergency order in a proceeding under this section by a preponderance of the evidence. A party asserting an affirmative defense shall bear the burden of proving, by a preponderance of the evidence, the affirmative defense in a proceeding under this section.

(h) *Filing and service.* (1) Each petition, pleading, motion, notice, order, or other document submitted in connection with an emergency order issued under this section must be filed (commercially delivered or submitted electronically) with: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. All documents filed will be published on the Department's docket management website, *http://www.regulations.gov.* The emergency order must state the above filing requirements and the address of DOT Docket Operations.

(2) Each document filed in accordance with paragraph (h)(1) of this section must be concurrently served upon the following persons:

(i) Associate Administrator for Pipeline Safety, OPS, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, East Building, Washington, DC 20590;

(ii) Chief Counsel, PHC, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, East Building, Washington, DC 20590 (facsimile: 202–366–7041); and

(iii) If the petition for review requests a formal hearing, the Chief Administrative Law Judge, U.S. Department of Transportation, Office of Hearings, 1200 New Jersey Ave SE, c/o Mail Center (E11–310), Washington, DC 20590 (facsimile: 202–366–7536).

(3) Service must be made in accordance with § 190.5 of this part. The emergency order must state all relevant service requirements and list the persons to be served and may be updated as necessary.

(4) *Certificate of service.* Each order, pleading, motion, notice, or other document must be accompanied by a certificate of service specifying the manner in which and the date on which service was made.

(5) If applicable, service upon a person's duly authorized representative, agent for service, or an organization's president or chief executive officer constitutes service upon that person.

(i) *Report and recommendation.* The administrative law judge must issue a report and recommendation to the Associate Administrator at the close of the record. The report and recommendation must:

(1) Contain findings of fact and conclusions of law and the grounds for the decision, based on the material issues of fact or law presented on the record;

(2) Be served on the parties to the proceeding; and

(3) Be issued no later than 25 days after receipt of the petition for review by the Associate Administrator.

(j) *Petition for reconsideration.* (1) A petitioner aggrieved by the administrative law judge's report and recommendation may file a petition for reconsideration with the Associate Administrator. The petition for reconsideration must be filed:

(i) Not more than five days after the administrative law judge has issued a report and recommendation under paragraph (i) of this section, provided such report and recommendation is issued 20 days or less after the petition for review was filed with PHMSA; or

(ii) Not more than two days after the administrative law judge has issued his or her report and recommendation under paragraph (h) of this section, where such report and recommendation are issued more than 20 days after the petition for review was filed with PHMSA.

(2) The Associate Administrator must issue a decision on a petition for reconsideration no later than 30 days after receipt of the petition for review. Such decision constitutes final agency action on a petition for review.

(k) *Judicial review.* (1) After the issuance of a final agency decision pursuant to paragraphs (d)(2) or (j)(2) of this section, or the issuance of a written determination by the Administrator pursuant to paragraph (l) of this section, a pipeline owner or operator subject to and aggrieved by an emergency order issued under § 190.236 may seek judicial review of the order in the appropriate district court of the United States. The filing of an action seeking judicial review does not stay or modify the force and effect of the agency's final decision under paragraphs (d)(2) or (j)(3) of this section, or the written determination under paragraph (l) of this section, unless stayed or modified by the Administrator.

(l) *Expiration of order.* (1) *No petition for review filed:* If no petition for review is filed challenging the emergency order, then the emergency order shall remain in effect until PHMSA determines, in writing, that the imminent hazard no longer exists or the order is terminated by a court of competent jurisdiction.

(2) *Petition for review filed and decision rendered within 30 days.* If the Associate Administrator renders a final decision upon a petition for review within 30 days of its receipt by PHMSA, any elements of the emergency order upheld or modified by the decision shall remain in effect until PHMSA determines, in writing, that the imminent hazard no longer exists or the order is terminated by a court of competent jurisdiction.

(3) *Petition for review filed but no decision rendered within 30 days.* If the Associate Administrator has not reached a decision on the petition for review within 30 days of receipt of the petition for review, the emergency order will cease to be effective unless the Administrator determines, in writing, that the imminent hazard providing a basis for the emergency order continues to exist.

(m) *Time.* In computing any period of time prescribed by this section or an order or report and recommendation issued by an administrative law judge under this section, the day of filing of a petition for review or of any other act, event or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the

period runs until end of the next day which is not one of the aforementioned days.

Issued in Washington, DC on September 16, 2019, under authority delegated in 49 CFR 1.97.

Howard R. Elliott,

Administrator.

[FR Doc. 2019–20308 Filed 9–90–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 384

[Docket No. FMCSA–2001–11117]

RIN 2126–AA70

Limitations on the Issuance of Commercial Driver's Licenses With a Hazardous Materials Endorsement; Interim Final Rule Made Final

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA adopts those requirements of the interim final rule (IFR) published on May 5, 2003 (2003 IFR), and the IFR published on April 29, 2005 (2005 IFR), which have not previously been finalized, as final without change. The 2003 IFR amended the Federal Motor Carrier Safety Regulations (FMCSRs) to prohibit States from issuing, renewing, transferring, or upgrading a commercial driver's license (CDL) with a hazardous materials endorsement unless the Transportation Security Administration (TSA) in the Department of Homeland Security has first conducted a security threat assessment and determined that the applicant does not pose a security risk warranting denial of the hazardous materials endorsement, as required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act). The 2005 IFR amended the FMCSRs to conform to the TSA's compliance date and reduce the amount of advance notice that States must provide to drivers that a security threat assessment will be performed when they renew a hazardous materials endorsement. In addition, this rule incorporates a provision of the Implementing Recommendations of the 9/11 Commission Act of 2007 and two provisions of the FAA Reauthorization Act of 2018, which together authorize a State to issue a license to operate a motor vehicle transporting hazardous material in commerce to an individual who holds a valid transportation security card. In particular, the Agency incorporates TSA's definition of a Transportation Worker Identification Credential (TWIC) as equivalent to a Transportation Security Card (TSC).

DATES: This final rule is effective on October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Selden Fritschner, CDL Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; by email at *Selden.Fritschner@dot.gov,* or by telephone at (202) 366–0677. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2001–11117 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Executive Summary

A. Purpose of the Regulatory Action

This final rule adopts the provisions of the IFR published on May 5, 2003 (68 FR 23844) that have not previously been made final, and the provisions of the subsequent IFR published on April 29, 2005 (70 FR 22268). This is an administrative action to finalize these rules. This final rule includes conforming changes to incorporate a provision of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) (Pub. L. 110–53, Aug. 3, 2007) and two provisions of the FAA Reauthorization Act of 2018 (FAA Act) (Pub. L. 115–254, Oct. 5, 2018).

B. Costs and Benefits

This rulemaking does not make substantive changes to the obligations of regulated entities. It adopts as final certain elements of the 2003 IFR and the 2005 IFR and includes non-discretionary provisions from the 9/11 Act and the FAA Act. This rulemaking has no incremental impacts on the regulated entities.

III. Legal Basis for the Rulemaking

The legal basis for the 2003 IFR was explained in that document (68 FR 23844) and repeated in the 2005 IFR (70 FR 22268). Because those IFRs are available in the docket listed at the beginning of this document, the legal basis will not be repeated in detail here.

Briefly, section 1012 of the USA PATRIOT Act enacted 49 U.S.C. 5103a, which prohibits States from issuing a driver a hazardous materials endorsement to his/her CDL until the Secretary of Transportation has first determined that the driver does not pose a security risk warranting denial of the endorsement (Pub. L. 107–56, 115 Stat. 272, 396, Oct. 26, 2001).

The 9/11 Act made a technical correction to replace the reference to the ''Secretary of Transportation'' in 49 U.S.C. 5103a(a)(1) with a reference to the ''Secretary of Homeland Security'' (Sec. 1556, Pub. L. 110–53, 121 Stat. 266, 475, Aug 3, 2007). The change did not alter the legal basis of the 2003 and 2005 IFRs because those actions rested on a different provision, 49 U.S.C. 31305(a)(5)(C). The 9/11 Act also provided that an individual who has a valid transportation employee identification card issued by the Secretary of Homeland Security shall be deemed to have met the background check required by 49 U.S.C. 5103a.

The FAA Act (Pub. L. 115–254, Oct. 5, 2018) provides that an applicable individual subject to credentialing or a background investigation may satisfy that requirement by obtaining a valid TSC. Section 1978 of the FAA Act amended 49 U.S.C. 5103a(a)(1), by allowing a State to issue a license to operate a motor vehicle transporting hazardous material in commerce to an individual who holds a valid TSC issued under 46 U.S.C. 70105.

The Administrative Procedure Act requires an Agency to promulgate final rules only after prior notice and opportunity for comment, unless the Agency finds good cause that notice and opportunity for public comment are ''impracticable, unnecessary, or contrary to the public interest'' (5 U.S.C. 553(b)(3)(B)). FMCSA finds good cause that notice and comment are