



PHMSA Revises Pipeline Safety Enforcement Procedures to Strengthen Due Process and Transparency

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On June 4, 2025, the U.S. Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) announced revisions to its procedures for pipeline safety enforcement actions. The changes, outlined in two new policy memoranda from PHMSA's Office of the Chief Counsel (PHC), aim to enhance due process protections for pipeline operators by clarifying how civil penalties are calculated and expanding the disclosure of agency records in enforcement proceedings.

The reforms follow congressional direction, DOT General Counsel guidance and PHMSA's stated commitment to fair and transparent enforcement. PHMSA will implement these updated policies for all ongoing and upcoming cases, but they will not be applied retroactively to matters that have already been closed. Acting Administrator Ben Kochman stated that the updated procedures are designed to "refocus our enforcement program so the law is applied fairly, transparently and in a way that respects the core legal principle of due process."

Civil Penalty Calculation Policy Update

PHMSA has revised its policy for calculating proposed civil penalties in pipeline safety enforcement proceedings. Historically, PHMSA's Office of Pipeline Safety (OPS) used the version of its Civil Penalty Worksheet in effect at the time a Notice of Probable Violation (NOPV) was issued, even if that version reflected changes made after the date of the alleged violation. Under the new policy, OPS will calculate proposed penalties using the version of

the Civil Penalty Worksheet in effect on the date of the alleged violation ensuring that operators are not penalized based on retroactive adjustments to penalty calculations.

Expanded Disclosure of Case File Materials

PHMSA is also revising its procedures for determining the contents of the case file in enforcement proceedings. Previously, OPS's practice was to include only those records explicitly listed in its regulations at 49 CFR § 190.209(b). However, the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (2020 PIPES Act; P.L. 116-260) requires that enforcement case files include "all agency records pertinent to the matters of fact and law asserted." Additionally, in March 2025, the Acting General Counsel of DOT issued a memorandum outlining new procedural requirements for DOT enforcement actions. These include a duty to affirmatively disclose certain types of evidence in accordance with the U.S. Supreme Court's ruling in *Brady v. Maryland*.

In response, PHMSA will develop and implement revised procedures to ensure that all required records including pertinent agency materials and exculpatory evidence are included in case files and made available to respondents. Additionally, PHC is advising OPS to account for other procedural protections when determining which agency records should be included, particularly in cases involving informal hearings before a Presiding Official. These strengthened disclosure obligations aim to enhance transparency and due process while enabling pipeline operators to fully exercise their procedural rights and mount an effective defense in enforcement actions.

Next Steps

PHMSA's revised policies on civil penalty calculations and expanded disclosure of case file materials took effect through Chief Counsel memoranda issued on May 20 and May 29, 2025, respectively. The revised policies will apply to all pending and future enforcement cases but will not affect final agency actions already completed.

PHMSA's revised enforcement procedures respond to longstanding concerns from industry stakeholders about the transparency and fairness of the agency's enforcement practices. These changes may alter the dynamics of enforcement proceedings going forward, with operators likely to receive a more complete evidentiary record earlier in the process. Acting

Administrator Kochman emphasized that the updated procedures reflect a broader shift, refocusing PHMSA on its core mission of safety enforcement rather than environmental regulation. As he stated, “These long overdue reforms will refocus our enforcement program, so the law is applied fairly, transparently, and in a way that respects the core legal principle of due process.”

Akin’s environment and natural resources, government contracts and corporate teams are well equipped to assist clients in navigating PHMSA enforcement proceedings.

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