

progress towards the reasonable progress goal for each mandatory Class I Area located within the State and in each mandatory Class I Area located outside the State that may be affected by emissions from within the State in accordance with 40 CFR 51.308(g).¹⁰⁸

V. Proposed Action

EPA is proposing to approve Delaware's August 8, 2022, SIP submission, and supplemental SIP submission dated March 7, 2024, as satisfying the regional haze requirements for the second implementation period contained in 40 CFR 51.308(f).

VI. Incorporation by Reference

In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference specific provisions of the revised title V permits for Calpine Christiana Energy Center, Calpine Delaware City Energy Center, and Calpine West Energy Center, dated and effective December 19, 2023, between DNREC and Calpine Mid-Atlantic Generation, LLC, which includes emission limits and associated permit conditions for these facilities to comply with Regional Haze requirements for the 2nd Planning Period, as discussed in section IV of this preamble. These permit revisions are contained in DNREC's supplemental SIP submittal dated March 7, 2024, submitted on behalf of the State of Delaware; the portions of these permit revisions that will be incorporated by reference into the SIP are clarified by the DNREC Air Quality Division Director via a letter dated May 28, 2024. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 3 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been proposed for approval by EPA for inclusion in the SIP, will be incorporated by reference by EPA into that plan, will be fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission

¹⁰⁸ See section 12, "Determination of the Adequacy of the Existing Plan" of the DE Regional Haze SIP submittal.

that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean

that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies." The Delaware Department of Natural Resources and Environmental Control did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, this proposed rulemaking action, pertaining to Delaware's regional haze SIP submission for the second planning period, is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Adam Ortiz,

Regional Administrator, Region III.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 190

[Docket No. PHMSA-2022-0118]

RIN 2137-AF61

Pipeline Safety: Cost Recovery for Siting Reviews for LNG Facilities

AGENCY: Pipeline and Hazardous Materials Safety Administration

(PHMSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA is proposing a new fee for cost recovery for siting reviews of liquefied natural gas (LNG) facility project applications where the design and construction costs total \$2.5 billion or more. This proposed rule is necessary to implement section 103 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (PIPES Act of 2020), and to help provide adequate resources for siting reviews to promote the public safety and environmental protection objectives of the Office of Pipeline Safety (OPS). This proposed rule also revises current regulations authorizing PHMSA's cost recovery for design safety reviews of gas, hazardous liquid, and carbon dioxide pipeline facilities to improve the clarity of the regulations and reduce unnecessary administrative burdens.

DATES: Individuals interested in submitting written comments on this NPRM must do so by October 18, 2024.

ADDRESSES: Comments should reference Docket No. PHMSA-2022-0118 and may be submitted in any of the following ways:

- *E-Gov Web:* <http://www.regulations.gov>

This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.

- *Mail:* Docket Management System: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* DOT Docket Management System: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9:00 a.m. and 5:00 p.m. EST, Monday through Friday, except federal holidays.

- *Fax:* 202-493-2251.

Instructions: Include the agency name and identify Docket No. PHMSA-2022-0118 at the beginning of your comments. Note that all comments received will be posted without change to <https://www.regulations.gov> including any personal information provided. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under

the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments in response to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) 190.343, you may ask PHMSA to provide confidential treatment to the information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as "Confidential;" (2) send PHMSA a copy of the original document with the CBI deleted along with the original, unaltered document; and (3) explain why the information you are submitting is CBI. Submissions containing CBI should be sent to Alyssa Imam, 1200 New Jersey Avenue SE, DOT: PHMSA-PHP-30, Washington, DC 20590-0001. Any comment PHMSA receives that is not explicitly designated as CBI will be placed in the public docket.

Privacy Act Statement

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.dot.gov/privacy.

Docket: To access the docket, which contains background documents and any comments that PHMSA has received, go to <https://www.regulations.gov>. Follow the online instructions for accessing the docket. Alternatively, you may review the documents in person at DOT's Docket Management Office at the address listed above.

FOR FURTHER INFORMATION CONTACT:

Alyssa Imam by telephone at 202-738-4203 or via email at alyssa.imam@dot.gov.

SUPPLEMENTARY INFORMATION:

- I. Summary
- II. Background and Justification
- III. Proposed Amendments
- IV. Section-by-Section Analysis
- V. Regulatory Analyses and Notices

I. Summary

This proposed rulemaking would implement a mandate in the PIPES Act of 2020 (Pub. L. 116-260, Division R) to amend the pipeline safety regulations (49 CFR parts 190-199) to prescribe a fee assessment methodology for PHMSA

to recover its costs in performing 49 CFR part 193, subpart B, siting reviews of applications for new or expanded LNG facilities with project design and construction costs totaling \$2.5 billion or more. PHMSA expects that the cost recovery mechanisms proposed in this NPRM will help ensure that PHMSA maintains adequate resources to perform those siting reviews without diverting its limited resources from other critical dimensions of its regulatory oversight of jurisdictional gas (including LNG), hazardous liquid, and carbon dioxide pipeline facilities, while ensuring the costs associated with the review are borne by the project applicant rather than by all pipeline operators through the expenditure of operator user fees. The proposed rule would also revise current regulations authorizing PHMSA's cost recovery for design safety reviews of gas, hazardous liquid, and carbon dioxide pipeline facilities to improve the clarity of the regulations and reduce unnecessary administrative burdens.

II. Background and Justification

PHMSA conducts both a facility design safety review and siting review of LNG facilities under part 193. PHMSA conducts facility design safety reviews in connection with applications to the Federal Energy Regulatory Commission (FERC) or state regulators (as applicable) to construct, expand, or operate gas (including LNG) and hazardous liquid (as well as carbon dioxide¹) pipeline facilities; those reviews include reviews of application materials and inspections verifying construction in accordance with the application and pipeline safety regulations.

Prior to the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (2011 Act, Pub. L. 112-90), PHMSA did not recover costs incurred for conducting facility design safety reviews for LNG facilities or any other pipelines. Section 13 of the 2011 Act, 49 U.S.C. 60117(o), authorized PHMSA to recover costs for facility design safety reviews if the project application either involved design and construction costs totaling at least \$2.5 billion, or involved new or novel technologies, designs (such as LNG facilities, whose design, construction, and employed technology will often materially change from one project to the next), or new materials. While the 2011 Act allowed PHMSA to

¹ PHMSA in a parallel rulemaking (under RIN2137-AF64) will consider expanding the carbon dioxide pipelines subject to PHMSA regulation—and by extension, the pipelines subject to cost recovery under part 190 for PHMSA's design safety reviews.

recover fees for its costs incurred in performing facility design safety reviews, the 2011 Act did not allow PHMSA to expend any collected fees absent specific appropriation by Congress.

In 2017, PHMSA exercised the authority granted in section 13(a) of the 2011 Act by prescribing a fee structure and assessment methodology based on the costs of providing design safety reviews of applications for gas (including LNG) or hazardous liquid (including carbon dioxide) pipeline facilities.² In that final rule, PHMSA amended the pipeline safety regulations at part 190, subpart E, to prescribe a fee structure and assessment methodology for recovering costs associated with design safety reviews of applications for new projects for gas, hazardous liquid, LNG, and carbon dioxide pipeline facilities (each with design and construction costs totaling at least \$2.5 billion, or that contain new and novel technologies).

PHMSA is also responsible for the review of LNG facility siting; that review is an input to FERC's evaluation of applications for authorization to construct and operate a new LNG facility (or an expansion of an existing LNG facility). During the LNG facility siting review, PHMSA assesses the siting packages prepared by the applicants for new or expanded LNG facility projects for compliance with siting regulations at part 193, subpart B.

PHMSA had historically not been authorized by statute to assess fees recovering its costs associated with those reviews.³ However, in section 103 of the PIPES Act of 2020, Congress added a new statutory mandate at 49 U.S.C. 60303 allowing PHMSA to collect fees directly from operators of LNG facilities to recover the necessary expenses PHMSA incurs to perform subpart B siting reviews in connection with applications for new or expanded, large (\$2.5 billion or more project design and construction cost). But Congress did not make that new statutory authority self-executing; rather, in 49 U.S.C. 60303(b)(1), Congress directed PHMSA to "prescribe procedures" for collection

of those fees. And although Congress omitted from the statutory language at 49 U.S.C. 60303 explicit authorization to use fees collected from operators without subsequent congressional appropriations, in the Consolidated Appropriations Act of 2023 (2023 Act, Pub. L. 117–328), Congress appropriated \$400,000 to the Liquefied Natural Gas Siting Account for use of any monies collected from cost recovery for LNG facility subpart B siting reviews.⁴

Therefore, PHMSA proposes in this NPRM to implement the section 103 mandate in the PIPES Act of 2020 by amending its existing cost recovery regulations at part 190, subpart E, to establish procedures for assessment and recovery of its necessary expenses in performing part 193, subpart B, siting reviews for applications for large (\$2.5 billion or more) projects for new or expanded LNG facilities. PHMSA understands that codification of those procedures within its regulations is a prerequisite for PHMSA accessing funds appropriated by Congress for such reviews in the 2023 Act and any future appropriations legislation. Cost recovery of LNG facility siting reviews also ensures the beneficiaries of those reviews (some of whom may not pay PHMSA any user fees pursuant to 49 U.S.C. 60301) bear the costs, rather than other pipeline operators via their own annual user fee obligations. PHMSA also notes that its access to funds recovering the costs of its part 193, subpart B, siting reviews is critically important given the increasing strain placed on its limited resources by such reviews. Many of the same PHMSA personnel performing part 193, subpart B, siting reviews are also responsible for other regulatory oversight activities (e.g., design safety reviews, inspections, enforcement, and guidance and regulation development) related to LNG facilities and other jurisdictional pipeline facilities. This challenge has become increasingly pressing in recent years, as PHMSA has performed part 193, subpart B, siting reviews in connection with dozens of new or expanded LNG facilities of different sizes and project costs. OPS reports that among those facilities, large projects (in particular, those projects with design and construction costs of \$2.5 billion or more) have proven the most challenging. OPS estimates that PHMSA engineers and support personnel have historically spent an aggregate of around 550 person-hours—roughly equivalent to a quarter of the total working hours

a single PHMSA engineer works in a year—on each part 193, subpart B, siting review conducted for those projects.⁵ Lastly, the demands on PHMSA personnel resources in performing LNG facility siting reviews comes at the same moment as PHMSA's jurisdictional responsibilities have increased. PHMSA has recently expanded the scope of pipeline facilities for which it provides regulatory oversight to include Type C gas gathering pipelines, and in a forthcoming rulemaking consider expanding the scope of its part 195 regulations to address increased interest in expansion of pipeline infrastructure supporting carbon capture, use, and sequestration applications.⁶

III. Proposed Amendments

The existing regulations in 49 CFR part 190, subpart E, prescribe a fee structure and assessment methodology for recovering costs from design safety reviews of applications to FERC for new or expanded gas, LNG, hazardous liquid, and carbon dioxide pipeline facility projects with either project design and construction costs totaling at least \$2.5 billion, or that contain new or novel technologies and designs. PHMSA proposes to revise part 190, subpart E, to also prescribe a fee structure and assessment methodology for recovering costs associated with its 49 CFR part 193, subpart B, siting reviews of applications for new or expanded LNG facility projects with design and construction costs totaling at least \$2.5 billion. This proposal will execute PHMSA's authority granted in section 103 of the PIPES Act of 2020; PHMSA expects the commercial, public safety, and environmental benefits of this NPRM's proposed regulatory amendments described herein will outweigh any associated costs and support PHMSA's proposed rule compared to alternatives.

PHMSA's proposed regulatory amendments are expected to improve public safety and reduce threats to the environment by ensuring that PHMSA has adequate funding to perform high-quality part 193, subpart B, LNG facility siting reviews without diverting resources from other critical regulatory

² PHMSA, "Final Rule—Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes," 82 FR 7972 (Jan. 23, 2017).

³ PHMSA notes that for a period of time it worked around this legislative gap by entering into a Memorandum of Understanding and related Interagency Agreement with FERC by which FERC reimbursed PHMSA for the latter's part 193, subpart B, siting reviews. Memorandum of Understanding (MOU) <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/news/64706/ferc-phmsa-mou.pdf>. The Interagency Agreement was extended several times before expiring in September 2022.

⁴ Absent action by Congress, the funds appropriated by the 2023 Act will expire at the end of FY2025 (Oct. 1, 2025).

⁵ PHMSA also notes that many of the large LNG facility projects in fact involve two part 193, subpart B, siting reviews, each consisting of nearly identical work efforts—one in advance of issuance of a FERC certificate authorizing construction and operation of a facility, and another in response to material changes in the design of the facility during the construction phase.

⁶ PHMSA, "Final Rule—Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments," 86 FR 63266 (Nov. 15, 2021); see also n.1 above.

oversight functions over jurisdictional gas (including LNG), hazardous liquid, and carbon dioxide pipeline facilities. The proposed amendments also ensure that the costs of performing siting reviews are borne by the project applicants rather than through annual user fees paid by all pipeline facility operators. PHMSA also expects its proposed amendments would be technically feasible, reasonable, cost-effective, and practicable for affected entities seeking FERC authorization for large (\$2.5 billion or more) LNG facility project applications. PHMSA's proposed requirement that applicants provide notice and supporting documentation to PHMSA in parallel with submission of their certificate application to FERC is an incremental addition on existing FERC procedural requirements. And although PHMSA's proposed fees for LNG facility part 193, subpart B, siting reviews would be a new line item cost for such applicants, PHMSA's projections for those fees for each review (found in section V.B below) would be trivial (roughly 0.0024 percent) compared to the \$2.5 billion minimum design and construction costs of pertinent project applications. Further, PHMSA has designed its proposed approach to imposing fees in a way that maximizes regulatory certainty for affected entities. Specifically, PHMSA is proposing each part 193, subpart B, siting review fee to consist of (1) an up-front fee for estimated costs calculated from historical personnel costs involved in performing siting reviews for LNG facility project applications with design and construction costs of \$2.5 billion or more; and (2) a true-up payment to PHMSA at conclusion of that review should PHMSA's costs exceed the fee paid up-front based on PHMSA's estimated historical personnel costs. PHMSA's timely access to adequate financial resources to perform part 193, subpart B, siting reviews as those reviews initiate also benefits project applicants by facilitating timely completion of such reviews, while ensuring that PHMSA complies with the applicable legal requirements under appropriations law and 49 U.S.C. 60303. Viewed against those considerations and the compliance costs estimated in section V.A of this NPRM, PHMSA expects its proposed amendments will be a cost-effective approach to achieving the commercial, public safety, and environmental benefits discussed herein. Lastly, PHMSA believes that its proposed compliance timelines—based on an effective date of the proposed requirement of 120 days after

publication of a final rule in this proceeding (which would be in addition to the time since issuance of this NPRM)—would provide affected project applicants ample time to manage any related compliance costs.

A. Expand the Scope of and Criteria for Cost Recovery To Include LNG Facility Siting Reviews (§§ 190.401 and 190.403)

Section 190.401 describes the scope of the part 190, subpart E, cost recovery requirements, which currently do not allow for cost recovery for part 193, subpart B, siting reviews for LNG facility project applications. PHMSA proposes to amend the scope of its cost recovery regulation at § 190.401 to add a new paragraph (b) extending that provision's scope to include siting reviews for large (\$2.5 billion or more design and construction costs) LNG facility project applications, and require the applicant proposing a project to pay fees for the costs incurred by PHMSA relating to such reviews. This amendment would execute the mandate in section 103 of the PIPES Act of 2020 that PHMSA collect costs incurred for performing those LNG facility siting reviews of applications for new or expanded LNG facility projects with project design and construction costs totaling at least \$2.5 billion. This change would also clarify that cost recovery for those LNG facility siting reviews must meet the criteria for applicability specified in § 190.403. PHMSA also proposes a clerical amendment to existing language listing pipeline facilities subject to cost recovery to better align the existing text of § 190.401 (relocated within a new paragraph (a)) with the applicability requirements in § 190.403.

Section 190.403 specifies which applications⁷ for pipeline facility projects are subject to cost recovery requirements. PHMSA has reviewed the current regulatory language in paragraph (a) of that provision and has concluded that much of that language is expansive enough that it does not need amendment to allow for cost recovery of PHMSA's part 193, subpart B, siting reviews. The language in paragraph (a) refers broadly to "applications" for "projects" without explicitly limiting those projects in terms of the type of review (e.g., those governing design safety reviews or LNG facility siting reviews) PHMSA conducts. Paragraph (a) also employs a monetary threshold for each project application subject to

⁷ PHMSA does not expect that entities engaging in mandatory or discretionary pre-filing processes with FERC or those other authorities need to notify PHMSA until formal submission of their project application.

PHMSA cost recovery (project design and construction costs of least \$2.5 billion) that is identical to the threshold identified in the statutory authorization for part 193, subpart B, siting review cost recovery in section 103 of the PIPES Act of 2020. However, because PHMSA understands that applications to FERC for LNG facilities do not always contain estimated design and construction costs for those facilities,⁸ PHMSA proposes amendment of existing paragraph (a)(ii) to provide for forwarding to PHMSA of a good faith estimate of design and construction costs for those projects that do not include such estimated costs in their FERC application. PHMSA has also revised and relocated within a new paragraph (a)(1)(iii) other language within existing paragraph (a)(1)(ii) describing the cost elements informing development of such good faith estimates. PHMSA also proposes a conforming revision to paragraph (c) clarifying that the estimated costs of design and construction of a pipeline facility is among the "related materials" applicants should submit to PHMSA pursuant to § 190.403.

Paragraph (b) of § 190.403 also currently contains language codifying in regulation the statutory language at 49 U.S.C. 60117(o)(1)(A) barring PHMSA from "double-dipping" to recover costs for the same design/construction reviews via both its cost recovery authority pursuant to 49 U.S.C. 60117(o) and its authority to impose user fees pursuant to 49 U.S.C. 60301. Specifically, paragraph (b) states that "[t]he Associate Administrator may not collect design safety review fees under this section [implementing 49 U.S.C. 60117(o)] and 49 U.S.C. 60301 for the same design safety review." The PIPES Act of 2020 codified at 49 U.S.C. 60303(a)(2) an analogous prohibition preventing PHMSA from "double-dipping" to recover costs associated with its part 193, subpart B, siting reviews for LNG facilities pursuant to both 49 U.S.C. 60303 and either of its 49 U.S.C. 60117(o) design/construction cost recovery authority or its 49 U.S.C.

⁸ PHMSA also understands that applicants for FERC certificates for LNG facility projects will often submit with their application for the LNG facility an application for the gas supply pipeline connecting the LNG facility to the interstate gas transmission system. Because PHMSA understands its \$2.5 billion monetary threshold applies only to the design and construction costs for the LNG facility itself (and not its natural gas supply pipeline), PHMSA expects that applicants will distinguish between the costs of those facilities when submitting notifications to PHMSA as proposed in this NPRM.

60301 user fee authority.⁹ PHMSA therefore proposes to amend § 190.403(b) to incorporate that new statutory prohibition into regulation. PHMSA has also made clerical amendments to the existing § 190.403(b) to accommodate the addition of that new statutory prohibition.

Lastly, PHMSA's proposal would make changes in § 190.403 to identify materials it reviews when performing a part 193, subpart B, LNG facility siting review. Specifically, PHMSA proposes a new paragraph (d)—modeled on existing paragraph (c) identifying materials PHMSA reviews in connection with its design safety reviews for gas (including LNG), hazardous liquid, and carbon dioxide pipelines—for part 193, subpart B, LNG facility siting reviews. From those materials, the Associate Administrator shall develop and provide, as soon as practicable after notification of an application pursuant to § 190.405, an estimated cost for performing that review. PHMSA has chosen this approach for cost recovery for LNG facility siting reviews to ensure it has adequate resources in place to perform such reviews on initiation, thereby avoiding the need for protracted negotiation of a Master Agreement as provided by existing part 190, subpart E, cost recovery for design safety reviews.

B. Expand Notification Requirements To Include Applications for LNG Facility Projects With Design and Construction Costs Totaling or Exceeding \$2.5 Billion (§ 190.405)

Section 190.405 requires the applicant for any new pipeline facility project in which PHMSA will conduct a design safety review to notify PHMSA and provide with that notification specific materials that (including the design specifications and construction plans and procedures) PHMSA will typically examine during such reviews. Section 190.405 also identifies a 90-day target for PHMSA to provide the applicant its written feedback on those materials.

PHMSA now proposes a handful of amendments of § 190.405 for improved cost recovery procedural mechanics and to accommodate extension of that provision's notification requirements to part 193, subpart B, siting reviews for LNG facility project applications. Specifically, PHMSA proposes redesignating the existing text in

§ 190.405 as a new paragraph (a), and amending that language to explicitly address part 193, subpart B, LNG facility siting reviews. Consistent with its proposed expansion of the § 193.405 notification requirement, PHMSA also proposes adding examples of additional siting-related activities (e.g., site preparation) that are important milestones related to siting of an LNG facility within the list of existing design/construction-focused activities triggering the § 193.405 documentation requirement. PHMSA also proposes a new paragraph (b) stating that it reserves discretion to delay initiation of its part 193, subpart B, LNG facility siting reviews until receipt of payment in full of the estimated review costs provided for a project application pursuant to proposed § 190.403(d).

PHMSA also proposes a new paragraph (c) stating explicitly that LNG facility project applicants seeking part 193, subpart B, LNG facility siting reviews must provide PHMSA timely notification of both material changes to an application (i.e., changes to project applications resulting in significant changes to the materials submitted to PHMSA pursuant to § 190.405(a)) and any change in the estimated design and construction costs for the project (e.g., as a result of those changes to the design and construction of the facilities, or increased labor, material, or financing costs) that would result in the project meeting or exceeding the monetary threshold in § 190.403(a)(1).¹⁰ LNG facilities are time, capital, labor, and material-intensive projects—changes in the cost of one or more of those factors may result in design and construction costs rising significantly between submission of a FERC application and completion of construction. PHMSA's proposed change would ensure that PHMSA will be able to recover its costs in conducting part 193, subpart B, LNG facility siting reviews as project costs increase above the \$2.5 billion monetary threshold for cost recovery. Similarly, design changes during the construction phase of an LNG facility project (i.e., after issuance of the FERC certificate) may materially affect assumptions supporting the analysis within PHMSA's part 193, subpart B, siting review, necessitating PHMSA perform that review again. Notification of those design changes will facilitate PHMSA's recovery of its costs in performing any

additional part 193, subpart B, siting reviews required by material changes to facility design during construction.

C. Conform Amendments to Master Agreement Requirements for Facility Design Safety Reviews (§ 190.407)

Section 190.407 describes the content of Master Agreements entered into between PHMSA and applicants for those projects the Associate Administrator has determined recovery of PHMSA's costs in performing facility design safety reviews is necessary. PHMSA proposes clarifying revisions to the prefatory language of this provision to reflect the expansion of part 190, subpart E, cost recovery procedures to allow for cost recovery for part 193, subpart B, LNG facility siting reviews.

D. Expand Fee Structure To Include LNG Siting Reviews (§ 190.409)

Section 190.409 describes the cost recovery fee structure for design reviews of gas (including LNG), hazardous liquid, and carbon dioxide pipeline facilities with overall design and construction costs totaling at least \$2.5 billion, or that contain new or novel technologies and designs. PHMSA proposes adding LNG siting reviews to § 190.409 with no change to the species of qualifying costs identified in this provision. PHMSA proposes revising the introductory text to codify that the basis of the fees that PHMSA will charge is to recover the costs for LNG facility siting reviews.

Applicable to all facilities, PHMSA is also proposing to remove the definition of "necessary for" in § 190.409. In the context of the fee structure, § 190.409 currently states that the costs will be based only on costs "necessary for" conducting the facility design safety review. Section 190.409 goes on to state that "necessary for" means "that but for the facility design safety review, the costs would not have been incurred and that the costs cover only those activities and items without which the facility design safety review cannot be completed." PHMSA is proposing to remove this definition from this section to improve the readability of § 190.409, and to avoid confusion regarding what is or is not a cost that would not have been incurred "but for" a design safety or LNG facility siting review. PHMSA notes that some of the same PHMSA personnel may continue to perform regulatory oversight of compliance with pipeline safety regulations before and after reviews subject to part 190, subpart E, cost recovery are completed such that attribution of personnel costs exclusively to that review will prove impracticable in practice. That said,

⁹ Should an applicant for an LNG facility project voluntarily request PHMSA consider design and construction elements within PHMSA's part 193, subpart B, siting review, PHMSA reserves discretion to recover costs for review of those elements during one or both of its part 193, subparts B (siting) or C and D (design & construction) safety reviews.

¹⁰ PHMSA expects that cost recovery for part 193, subpart B, siting reviews proposed herein will attach to any notification—whether an initial notification per proposed paragraph (a), or a later notification per proposed paragraph (c)—submitted to PHMSA after the effective date of a final rule in this proceeding.

PHMSA notes that other existing or proposed procedural mechanics in part 190, subpart E, will serve the same purpose as the deleted reference to “necessary” costs by addressing the double-dipping concern that had motivated introduction of that language in § 190.409. First, the language at § 190.409(b) would codify in regulation the statutory prohibitions against double-dipping at 49 U.S.C. 60117(o)(1)(A) and 49 U.S.C. 60303(a)(2). Second, the negotiation of Master Agreements (to include audit rights) for design safety reviews pursuant to § 190.407(a)(3) would provide opportunities for applicants to ensure PHMSA’s cost recovery is focused on its bona fide costs in performing those reviews. Third, and lastly, PHMSA has designed the fee structure for LNG facility siting reviews proposed herein based on historical personnel costs in performing those reviews.

E. Modify Billing and Payment Procedures To Require Payment Upon Receipt (§ 190.411)

Section 190.411 describes the procedural mechanics for billing and payment of facility design safety reviews for which the Associate Administrator has determined that cost recovery is necessary. PHMSA proposes several amendments to this provision to introduce procedures specific to billing and payment of fees for PHMSA’s costs in performing part 193, subpart B, LNG facility siting reviews. First, PHMSA proposes to redesignate the current prefatory text governing billing and payment of fees for design safety reviews as a new paragraph (a); current paragraphs (a) through (d) will be redesignated as paragraphs (a)(1) through (4).

Second, PHMSA proposes redesignating as a new paragraph (c) current language at paragraph (e) asserting its discretion to exercise regulatory oversight notwithstanding any receipt of fees for recovery of its

costs for facility design safety reviews. PHMSA also proposes amendments to newly designated paragraph (c) for clarity, and to reflect the proposed amendment of part 190, subpart E, cost recovery procedures to include cost recovery for LNG facility siting reviews.

Third, PHMSA proposes a new paragraph (b) establishing billing and payment procedures for each part 193, subpart B, LNG facility siting review. Specifically, before initiation of each review, PHMSA will provide applicants a bill for its estimated costs and will not begin its review until payment of the fee for those estimated costs.¹¹ The up-front fee for PHMSA’s estimated costs has been calculated as \$65,000 for calendar year 2024. That value is derived from the personnel costs associated with historical work efforts (measured in hours and set forth in the table below) by PHMSA personnel involved in performing siting reviews for LNG facility project applications with design and construction costs of \$2.5 billion or more.

TABLE 1—HOURS ASSOCIATED WITH HISTORICAL WORK EFFORTS

Title	Pay grade	Estimated number of hours contributing to complete part 193 siting review for \$2.5 billion project
Deputy Associate Administrator	SES	5
Director	GS-15	10
Supervisory General Engineer	GS-14	68
General Engineer (Lead)	GS-14	420
General Engineer (Support)	GS-9	40
Technical Writer	GS-9	1
Attorney Advisor Manager	GS-15	1
Staff Attorney Advisor	GS-14	8

PHMSA then multiplied those historical work efforts by hourly rates derived from annual salaries for Senior Executive Service (SES) and General Schedule (GS) employees in the Baltimore/Washington area (the location of PHMSA’s headquarters) published within salary tables on the Office of Personnel Management’s (OPM) website.¹² PHMSA used these calculated wages to estimate total personnel costs, including miscellaneous benefits (e.g., FICA, FERS

contribution, health insurance, etc.) not accounted for in OPM salary tables.¹³ PHMSA’s up-front fee for its estimated costs billed to project applicants will automatically change in future calendar years to reflect OPM’s adjustments to those salary tables.

At the conclusion of each part 193, subpart B, LNG facility siting review—but before it issues a finding on compliance—PHMSA will calculate the difference between the fee paid for estimated costs and its actual costs for those costs identified in § 190.409, and

then bill the applicant for the balance. PHMSA also proposes that it would be able to withhold its finding of compliance with part 193, subpart B, requirements until the applicant has paid any outstanding fees. PHMSA does not contemplate that an applicant would be entitled to refund of fees for LNG facility siting reviews paid pursuant to part 190, subpart E, should PHMSA’s actual costs either not meet the up-front fee for estimated costs, or the applicant withdraws or amends an

¹¹ As explained in sections II and III.B above, over the course of its lifecycle from initial application to completion of construction, an LNG facility project may require PHMSA to perform more than one part 193, subpart B, siting review. Therefore, PHMSA notes that each time it has to perform this review (largely identical in terms of work effort), it will impose a separate up-front fee pursuant to § 190.411(b).

¹² OPM, “Salaries and Wages—2024,” <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/> (last visited Mar. 4, 2024). PHMSA further notes that in using those salary tables it has—to yield more conservative numbers regarding the compliance costs for this rulemaking—employed in its calculations salaries corresponding to (1) the fifth step for each grade on the GS scale, and (2) the high end of the range for SES salaries.

¹³ Bureau of Labor Statistics, Press Release No. USDL-23-2567, “Employer Costs for Employee Compensation” (Dec. 15, 2023), <https://www.bls.gov/news.release/pdf/ecec.pdf> (noting that non-salary employee compensation for state and local government employees—which PHMSA believes is a reasonable proxy for federal government employee compensation—makes up 38 percent of total compensation).

application for its project such that it no longer meets the monetary threshold at § 190.403(a).

PHMSA expects the two-stage approach proposed in the new paragraph (b) will ensure it has timely access to funds needed to verify compliance with part 193, subpart B, LNG facility siting requirements. PHMSA notes that those reviews are inputs to decision-making by another agency (FERC); by avoiding potentially protracted negotiation of a Master Agreement as contemplated by current part 190, subpart E, procedures, PHMSA can ensure that, at the initiation of its review, it will have adequate resources to begin and complete those reviews without introducing significant delay in FERC's review of certificate applications for LNG facility projects. And should those estimated costs ultimately prove lower than PHMSA's actual costs, PHMSA proposes a "true-up" mechanism employed at the conclusion of each review to ensure that PHMSA is made whole, thereby reducing the risk of diversion of its limited personnel resources from other jurisdictional oversight activities. Additionally, PHMSA's proposal to condition its issuance of a determination regarding compliance with part 193, subpart B, LNG facility siting review upon receipt of any outstanding fees would avoid scenarios whereby an applicant delays or avoids payment either because they are unhappy with PHMSA's determination or because they have already obtained the benefit of that determination within FERC's certificate review.

IV. Section-by-Section Analysis

Subpart E Title

PHMSA proposes to amend the heading of part 190, subpart E to read, "Cost Recovery for Design Reviews and LNG Siting Reviews." This proposal would clarify that LNG siting reviews are included in the cost recovery requirements in 49 CFR part 190, subpart E.

Section 190.401—Scope

This section describes PHMSA review activities for which the provisions at part 190, subpart E, allow cost recovery. Currently, such cost recovery is limited to recovery of costs associated with PHMSA's design safety review of applications for certain projects involving new or expanded, large gas

(including LNG), hazardous liquid, or carbon dioxide pipeline facilities. PHMSA proposes to amend this section by redesignating the current regulatory text as paragraph (a); adding a new paragraph (b) to codify that PHMSA will recover its costs in conducting LNG facility siting reviews under part 193, subpart B; and making a clerical revision within paragraph (a) to better align § 190.401 with § 190.403 applicability requirements.

Section 190.403—Applicability

This section describes criteria (including a \$2.5 billion project monetary threshold) for project applications of gas (including LNG), hazardous liquid, or carbon dioxide pipeline facilities in which PHMSA may recover its review costs as contemplated by § 190.401. PHMSA proposes to amend the language in existing paragraph (a)(ii) to provide for application of part 190, subpart E, cost recovery monetary threshold requirements to LNG facility projects whose FERC applications may not contain an estimate of project design and construction costs. PHMSA also proposes to relocate within a new paragraph (a)(1)(iii) existing text at § 190.403(a)(1)(ii) describing the cost elements informing development of such good faith estimates. PHMSA also proposes to introduce a new § 190.403(b) mirroring a statutory prohibition in the PIPES Act of 2020 barring PHMSA from collecting fees under multiple statutory authorities (and their implementing regulations) for the same LNG facility siting review. PHMSA also proposes a conforming revision to paragraph (c) clarifying that the estimated costs of design and construction of a pipeline facility are among the "related materials" applicants should submit to PHMSA pursuant to § 190.403. Lastly, PHMSA proposes to introduce a new paragraph (d) identifying application materials PHMSA will review in connection with its part 193, subpart B, LNG facility siting reviews.

Section 190.405—Notification

This section identifies notification and documentation submission requirements for applicants for large (\$2.5 billion or more design and construction costs) projects on gas, LNG, hazardous liquid, and carbon dioxide pipelines facilities. PHMSA proposes to modify § 190.405 by redesignating the

existing text as a new paragraph (a), and amending that text to accommodate expanded application of those notification requirements to LNG facility siting reviews under part 193, subpart B. PHMSA also proposes to introduce a new paragraph (b) reserving discretion to delay review of submitted materials for LNG facility siting reviews until payment in full of the fee of the estimated costs for such review. Lastly, PHMSA proposes a new paragraph (c) requiring applicants for new or expanded LNG facility projects to notify PHMSA of any material changes to documentation submitted to PHMSA pursuant to § 195.405, or changes to estimated project design and construction costs that would cause the project to exceed the monetary threshold in § 195.403(a).

Section 190.407—Master Agreement

Section 190.407 describes the content of Master Agreements entered into between PHMSA and applicants for those projects the Associate Administrator has determined recovery of PHMSA's costs in performing facility design safety reviews is necessary. PHMSA proposes clarifying revisions to the prefatory language of this provisions to distinguish between procedures for cost recovery in connection with design safety reviews (which will involve applicants entering into Master Agreements for such cost recovery) and part 193, subpart B, LNG facility siting reviews (which will not require applicants to enter into Master Agreements for such cost recovery).

Section 190.409—Fee Structure

PHMSA proposes revising the introductory text to codify the basis of the fees PHMSA will charge to recover the costs for LNG siting reviews. PHMSA also proposes removing the definition of "necessary for" and all uses of "necessary for" in this section, as this language has not served to clarify the regulations as PHMSA intended.

Section 190.411—Procedures for Billing and Payment of Fee

Section 190.411 describes procedures for billing and payment of fees for cost recovery of PHMSA's design safety reviews. PHMSA proposes a series of amendments to this provision to accommodate procedural mechanisms for cost recovery of part 193, subpart B, LNG facility siting reviews.

First, PHMSA proposes to redesignate the current prefatory text governing fees for cost recovery in connection with facility design safety reviews as a new paragraph (a); existing paragraphs (a)–(d) will then be redesignated as paragraphs (1)–(4) within the new paragraph (a).

Second, PHMSA proposes introduction of a new paragraph (b) establishing the procedural mechanism for billing and payment of fees for estimated costs for each LNG facility siting review before PHMSA initiates each review, as well as subsequent adjustment of those fees based on PHMSA's actual costs in performing each review. PHMSA proposes those up-front fees for its estimated costs will be derived from the personnel costs associated with historical work efforts by PHMSA personnel involved in performing siting reviews for LNG facility project applications with design and construction costs of \$2.5 billion or more, and will automatically change in future calendar years to reflect changes in the salaries of pertinent employees memorialized on OPM's website. PHMSA also proposes that, before issuance of a finding of compliance with its part 193, subpart B, requirements, it will bill the project applicant for any difference in the actual costs incurred by PHMSA and the up-front fee for its estimated costs; issuance of PHMSA's compliance determination will be contingent on an applicant's payment of any outstanding fees as a result of that adjustment process.

Third, and lastly, PHMSA proposes redesignating and clarifying the disclaimer at existing paragraph (e) regarding PHMSA's discretion to exercise its authorities under law to protect public safety and the environment as a new paragraph (c).

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rule

This proposed rule is published under the authority of the Secretary of Transportation (Secretary) delegated to the PHMSA Administrator pursuant to 49 CFR 1.97. Among the statutory authorities delegated to PHMSA are those set forth in the federal pipeline safety statutes (49 U.S.C. 60101 *et seq.*). Section 60102 authorizes the Secretary to issue regulations governing the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Section 60117(o) directs the Secretary to prescribe procedures for fees recovering

PHMSA's costs in performing design safety reviews for jurisdictional pipeline facilities. Lastly, section 103 of the PIPES Act of 2020 (codified at 49 U.S.C. 60303) requires the Secretary to establish procedures for recovering PHMSA's costs in performing LNG facility siting reviews pursuant to 49 CFR part 193, subpart B.

B. Executive Order 12866 and 14094; DOT Regulatory Policies and Procedures

Executive Order 12866 ("Regulatory Planning and Review"), as amended by Executive Order 14094 ("Modernizing Regulatory Review"), requires that agencies "assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating."¹⁴ Agencies should consider quantifiable measures and qualitative measures of costs and benefits that are difficult to quantify. Further, Executive Order 12866 requires that agencies select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach. Similarly, DOT Order 2100.6A ("Rulemaking and Guidance Procedures") requires that regulations issued by PHMSA and other DOT Operating Administrations consider an assessment of the potential benefits, costs, and other important impacts of the proposed action, and should quantify (to the extent practicable) the benefits, costs, and any significant distributional impacts, including any environmental impacts.

Executive Order 12866 (as amended by Executive Order 14094) and DOT Order 2100.6A require that PHMSA submit "significant regulatory actions" to the Office of Management and Budget (OMB) for review. NPRM is not a significant regulatory action under section 3(f) of Executive Order 12866 ("Regulatory Planning and Review") and, therefore, was not reviewed by OMB; nor is this NPRM considered a significant rulemaking under DOT Order 2100.6A.

Executive Order 12866 (as amended) and DOT Order 2100.6A also require PHMSA to provide a meaningful opportunity for public participation, which reinforces requirements for notice and comment in the Administrative Procedure Act (APA, 5 U.S.C. 551 *et seq.*). In accord with the requirement, PHMSA seeks public comment on the proposals in the NPRM

(including preliminary cost and cost savings analyses pertaining to those proposals, as well as discussions of the public safety, environmental, and equity benefits), as well as any information that could assist in evaluating the benefits and costs of PHMSA's NPRM.

Consistent with Executive Order 12866 (as amended by Executive Order 14094) and DOT Order 2100.6A, PHMSA has assessed the benefits and costs of the proposed rule as well as reasonable alternatives. As discussed in section II above, this rulemaking implements a mandate by Congress in section 103 of the PIPES Act of 2020 for the establishment of procedures for recovery of PHMSA's costs in performing part 193, subpart B, design reviews of large (\$2.5 billion or more design and construction costs) LNG facility project applications to FERC. PHMSA expects the proposed rule could result in unquantified public safety and environmental benefits by preventing the potential diversion of PHMSA's limited resources from the Agency's other pipeline safety regulatory oversight responsibilities to cover costs associated with PHMSA's LNG facility siting reviews for those projects. However, because it is not clear which activities would go unfunded due to the costs of conducting LNG facility siting reviews, PHMSA is unable to quantify those benefits with a meaningful degree of certainty.

PHMSA acknowledges that its proposed new fees providing cost recovery for its part 193, subpart B, LNG facility siting reviews will impose a new line item cost on affected applicants seeking FERC authorization to construct and operate certain LNG facilities. Pursuant to an August 2018 Memorandum of Understanding (MOU) between FERC and PHMSA, FERC agreed to reimburse PHMSA for direct costs that PHMSA incurred performing LNG facility siting reviews that are considered in FERC's authorization certificate application process. FERC and PHMSA subsequently entered into an interagency agreement whereby FERC reimbursed PHMSA for time spent by PHMSA staff to complete siting reviews for LNG facilities. The funds FERC used for those reimbursements were not passed along as a cost to applicants. The fees proposed herein will, therefore, be a new cost for affected applicants.

Since the August 2018 FERC/PHMSA MOU, PHMSA has on average completed seven siting reviews for LNG facility applications of any size per year, with a typical breakdown of labor required from PHMSA employees for large facilities (design and construction

¹⁴ Executive Order 12866 is available at 58 FR 51735 (Oct. 4, 1993); Executive Order 14094 is available at 88 FR 21879 (Apr. 6, 2023).

costs of \$2.5 billion or more) as laid out in the table below.¹⁵

TABLE 2—TYPICAL LABOR REQUIRED FROM PHMSA EMPLOYEES FOR LARGE LNG FACILITIES

Title	Pay grade + step	Estimated number of hours contributing to complete part 193 siting review from beginning to end for \$2.5 billion project	Hourly rate (assuming 2024 WDC, step 5 for each pay scale)
Deputy Associate Administrator	SES	5	\$107
Director	GS-15	10	89
Supervisory General Engineer	GS-14	68	76
General Engineer (Lead)	GS-14	420	76
General Engineer (Support)	GS-9	40	37
Technical Writer	GS-9	1	37
Attorney Advisor Manager	GS-15	1	89
Staff Attorney Advisor	GS-14	8	76

Total base salary of personnel for each review: \$41,000

Aggregate personnel costs for each review (assuming non-salary benefits make up 38% of employee compensation):¹⁶ \$65,000

* Hourly rates based on step 5 for each GS level (per OPM's 2024 WDC pay scale) and 2024 maximum SES pay level. See <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>.

¹⁶ PHMSA uses BLS estimates for state and local government employee compensation as a proxy for federal government employee compensation (obtained from <https://www.bls.gov/news.release/pdf/ecec.pdf>, last accessed March 15, 2024). Wages are estimated to make up 62 percent of employee compensation, with non-wage benefits making up the remaining 38 percent. Equivalently, non-wage benefits are valued at approximately 61 percent of wages (1/0.62 = 1.61).

PHMSA calculates the cost of an average siting review to include approximately \$41,000 in wages, and an additional \$14,000 in non-wage benefits, for an average per siting review cost of \$65,000.¹⁷ PHMSA projects that, notwithstanding continued demand for LNG worldwide, the volume of its review of applications for new, large LNG facility projects of the sort that would be subject to the fees proposed herein will decrease going forward, given reduced interest in building new LNG facilities due to large-scale LNG export terminals that have already been built or authorized, and a wave of recently announced LNG export projects in other exporting countries.¹⁸ PHMSA has therefore conservatively estimated

that (1) the current average of seven reviews for facilities of any size per year would reduce to six over the next three years, then to five, and finally four per year over the remaining years within a 10-year forecast period; and (2) those reviews would be for large (\$2.5 billion or more design and construction costs) projects that would be subject to the cost recovery requirements proposed herein. Similarly, PHMSA expects that its own personnel costs in conducting part 193, subpart B, siting reviews for those facilities will be at or near its historical estimated average of \$65,000 per review throughout the analysis period as that value accounts for a range of LNG facility projects—some well in excess of, and some closer to, the \$2.5

billion monetary threshold PHMSA proposes in this NPRM.¹⁹

Given the reduced frequency of the required siting reviews and assuming the current average cost to remain static over the 10-year forecast period, the rule would result in an additional burden of approximately \$3.71 million over 10 years, as described in Table 3.

This is discounted to \$3.43 million using a two percent rate, and the annualized cost is \$381,899. Although these costs associated with directly itemized and billed LNG facility siting reviews are not substantial relative to the total project costs (\$2.5 billion or greater), these costs in this proposed rulemaking will create a new cost for affected applicants.

TABLE 3—TOTAL AND ANNUALIZED COSTS OF THE NPRM

Year	Number of siting reviews	Cost per review	Total costs	NPV at 2%
1	7	\$65,000	\$455,000	\$455,000
2	7	65,000	455,000	446,627
3	7	65,000	455,000	437,332
4	6	65,000	390,000	367,506
5	6	65,000	390,000	360,300
6	6	65,000	390,000	353,235

¹⁵ From September 2018 through October 2022, PHMSA performed siting reviews on a total of 38 active projects of any size.

¹⁷ PHMSA uses BLS estimates for state and local government employee compensation as a proxy for federal government employee compensation (obtained from <https://www.bls.gov/news.release/pdf/ecec.pdf>, last accessed March 15, 2024). Wages are estimated to make up 62 percent of employee compensation, with non-wage benefits making up the remaining 38 percent. Equivalently, non-wage benefits are valued at approximately 61 percent of wages (1/0.62 = 1.61).

¹⁸ See, e.g., Reuters, “IEA Says ‘Unprecedented’ Supply Surge Could Lead to LNG Glut from 2025” (Oct. 24, 2023), <https://www.reuters.com/markets/commodities/iea-says-unprecedented-supply-surge-could-lead-lng-glut-2025-2023-10-24/>, and Reuters, “Qatar’s LNG Bigger LNG Expansion Could Squeeze Out United States, other LNG Rivals” (Feb. 27, 2024), <https://www.reuters.com/business/energy/qatars-new-lng-expansion-plans-squeeze-out-us-other-rivals-2024-02-27/>. PHMSA notes this projection is consistent with the relatively few U.S. LNG export terminals currently before, or anticipated by, FERC’s website. See supra note 18.

¹⁹ PHMSA acknowledges that it is also proposing miscellaneous clerical revisions to various existing provisions of part 190, subpart E (governing design safety reviews of jurisdictional pipeline facilities), but expects those amendments will entail only de minimis compliance costs for affected project applicants. PHMSA has also, for the purpose of this analysis, not estimated other, variable costs identified at § 190.409 that it would recover pursuant to this rulemaking because PHMSA’s personnel costs are the largest component (by far) of PHMSA’s total costs in performing part 193, subpart B, siting reviews.

TABLE 3—TOTAL AND ANNUALIZED COSTS OF THE NPRM—Continued

Year	Number of siting reviews	Cost per review	Total costs	NPV at 2%
7	5	65,000	325,000	288,591
8	5	65,000	325,000	282,932
9	4	65,000	260,000	221,908
10	4	65,000	260,000	217,556
Total	57	.....	3,705,000	3,430,437
Annualized Cost .....	.....	.....	.....	381,899

As a sensitivity analysis, alternative costs assuming a constant demand for siting reviews per year are presented below in Table 4, as opposed to the moderately decreased demand presented in Table 3 above.

TABLE 4—SENSITIVITY ANALYSIS: TOTAL AND ANNUALIZED COSTS OF THE NPRM

Year	Number of siting reviews	Cost per review	Total costs	NPV at 2%
1	7	\$65,000	\$455,000	\$455,000
2	7	65,000	455,000	446,078
3	7	65,000	455,000	437,332
4	7	65,000	455,000	428,757
5	7	65,000	455,000	420,350
6	7	65,000	455,000	412,108
7	7	65,000	455,000	404,027
8	7	65,000	455,000	396,105
9	7	65,000	455,000	388,338
10	7	65,000	455,000	380,724
Total	70	.....	4,550,000	4,168,818
Annualized Cost .....	.....	.....	.....	464,100

Under this scenario, the nominal cost over 10 years increases from \$3.71 million to \$4.55 million—discounted to \$4.17 million at two percent—from the original \$3.43 million. The annualized cost estimate increases from \$381,899 to \$464,100 under this alternative scenario.

In both of these scenarios, the total cost to industry over the next 10 years would be less than \$5 million. For comparison, PHMSA takes the value of a statistical life to be \$12.5 million,²⁰ meaning that prevention of even one fatality by avoiding diversion of limited PHMSA personnel resources from other regulatory oversight responsibilities over the next 10 years would cause the benefits of this rule to exceed the costs twice over. Similarly, when ranking injuries on the 6-Point Maximum Abbreviated Injury Scale (MAIS), a MAIS 5 “critical” injury is valued at approximately \$7.4 million,²¹ so preventing even one “critical” injury

over the next 10 years would cause the benefits of this rule to exceed the costs. While PHMSA is not able to estimate the benefits of this rule due to uncertainty about which projects would go unfunded in its absence, it believes the benefits of the rule would exceed the costs.

With respect to the anticipated benefits of the rulemaking, as discussed in section II above, PHMSA (absent a statutory change to increase the funds appropriated to the Liquefied Natural Gas Siting Account) would not be able to spend any collected fees for LNG facility siting reviews in excess of \$400,000 appropriated by Congress in the 2023 Act. However, PHMSA has been mandated to recover costs associated with LNG facility siting reviews, even if it does not yet have approval to spend the collected funds in excess of the \$400,000 appropriated by the 2023 Act. Thus, the potential safety benefits of this rule may not be fully realized until PHMSA is authorized by Congress to spend the fees it collects as they are received, or unless in future legislation Congress appropriates funds commensurate with fees collected pursuant to this rulemaking.

Lastly, PHMSA has considered and rejected alternatives to the fee recovery procedures proposed in this NPRM.

PHMSA notes that it lacks discretion to avoid establishing fees for cost recovery as proposed herein given that this rulemaking responds to a congressional mandate in section 103 of the PIPES Act of 2020 to establish such procedures. PHMSA also submits that other, alternative approaches for calculating and assessing such fees (e.g., employing the negotiated Master Agreement approach used for pipeline facility design review cost recovery; assessing actual costs on completion of its LNG facility siting review; etc.) could involve considerable delay before PHMSA receives fees, thereby increasing the risk that PHMSA’s limited resources would be diverted from other critical regulatory oversight functions. In contrast, PHMSA expects its approach proposed in this NPRM appropriately balances its and projects applicants’ interests. An applicant’s payment of fees at initiation of each part 193, subpart B, LNG facility siting review will ensure the Agency has timely access to funds needed to perform that review without diversion of PHMSA’s limited resources from other regulatory oversight activities. Moreover, PHMSA’s proposed “true-up” mechanism at the conclusion of that review ensures it will be made whole by each applicant for any actual costs incurred conducting a siting

²⁰ Departmental Guidance on Valuation of a Statistical Life in Economic Analysis | US Department of Transportation.

²¹ DOT, “Treatment of the Value of Preventing Fatalities and Injuries in Preparing Economic Analyses” (Mar. 2021), <https://www.transportation.gov/sites/dot.gov/files/2021-03/DO%20VSL%20Guidance%20-%202021%20Update.pdf>.

review for that applicant's LNG facility project. Lastly, the flat, up-front estimated fee PHMSA proposes to use for its estimated costs in performing each LNG facility siting review provides certainty for applicants in projecting costs associated with their FERC applications.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Flexibility Fairness Act of 1996 (5 U.S.C. 601 *et seq.*), generally requires federal agencies to prepare an initial regulatory flexibility analysis (IRFA) for a proposed rule subject to notice-and-comment rulemaking under the Administrative Procedures Act (5 U.S.C. 604(a)).²² Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking")²³ obliges agencies to establish procedures promoting compliance with the Regulatory Flexibility Act; DOT's implementing guidance is available on its website.²⁴

This NPRM was developed in accordance with Executive Order 13272 and DOT guidance to ensure compliance with the Regulatory Flexibility Act and provide appropriate consideration of the potential impacts of the rulemaking on small entities. The proposed fee structure and assessment methodology will be assessed only on large-scale new applications for LNG facility construction or expansion projects with design and construction costs totaling or exceeding \$2.5 billion. Since the fee structure will be assessed only on large-scale new projects, PHMSA does not expect small entities to be capable of investing in projects of this size, and thus does not expect the rule will have a significant economic impact on a substantial number of small entities.

D. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

PHMSA analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments")²⁵ and DOT Order 5301.1A ("Department of Transportation Tribal Consultation

Policy and Procedures"). Executive Order 13175 requires agencies to ensure meaningful and timely input from tribal government representatives in developing rules that significantly or uniquely affect tribal communities by imposing "substantial direct compliance costs" or "substantial direct effects" on such communities, or the relationship and distribution of power between the Federal Government and tribes.

PHMSA assessed the impact of the proposed rule and does not expect it will significantly or uniquely affect tribal communities or Native American tribal governments. The proposed rule's regulatory amendments are facially neutral and will have broad, national scope. PHMSA, therefore, does not expect this rule to significantly or uniquely affect tribal communities, much less impose substantial compliance costs on Native American tribal governments or mandate tribal action. Therefore, PHMSA concludes that the funding and consultation requirements of Executive Order 13175 and DOT Order 5301.1A do not apply.

E. Paperwork Reduction Act

Pursuant to 5 CFR 1320.8(d), PHMSA is required to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests.

PHMSA proposes requiring LNG facility operators submitting applications for large (\$2.5 billion or more) new or expansion projects at their facilities to notify PHMSA officials of those applications; thereafter, affected entities would need to pay PHMSA fees for PHMSA's costs in performing siting reviews pursuant to part 193, subpart B. PHMSA also proposes clarifying revisions to longstanding procedures at part 190, subpart E, for operator notification and assessment of fees for recovery of its costs in performing design safety reviews of jurisdictional pipeline facilities. PHMSA plans to create a new information collection process to cover these notification requirements for affected facility operators. PHMSA will request a new Control Number from OMB for this information collection. PHMSA will submit these information collection requests to OMB for approval based on the proposed requirements in this rule. The information collection is contained in the pipeline safety regulations, 49 CFR parts 190–199. The following information is provided for each information collection: (1) title of the information collection; (2) OMB control number; (3) current expiration date; (4) type of request; (5) abstract of the

information collection activity; (6) description of affected public; (7) estimate of total annual reporting and recordkeeping burden; and (8) frequency of collection. The information collection burden is estimated as follows:

1. *Title:* Notifications for Siting and Design Reviews.

OMB Control Number: Will request from OMB.

Current Expiration Date: TBD.

Abstract: This mandatory information collection covers the burden for pipeline facility owners and/or operators to notify PHMSA, according to 49 CFR 190.405, and provide design specifications, construction plans and procedures, project schedule, and related materials of their prospective project. Pipeline facility owners and operators must also notify PHMSA when costs associated with the design and construction of new facilities for which PHMSA conducts siting reviews exceed \$2.5 billion.

Affected Public: Jurisdictional pipeline facility operators applying for authorization to construct and operate new or expanded facilities for which PHMSA conducts facility design safety reviews; pipeline facility owners and operators with new facilities with design and construction costs exceeding \$2.5 billion for which PHMSA conducts siting reviews.

Annual Reporting Burden:

Total Annual Responses: 14.

Total Annual Burden Hours: 14 hours.

Frequency of Collection: On occasion.

Requests for a copy of this information collection should be directed to Angela Hill, Office of Pipeline Safety (PHP-30), Pipeline Hazardous Materials Safety Administration (PHMSA), 2nd Floor, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, 202-366-4595.

Comments are invited on:

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the revised collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic,

²² Agencies are not required to conduct an IRFA if the head of the agency certifies that the proposed rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. 605.

²³ 67 FR 53461 (Aug. 16, 2002).

²⁴ DOT, "Rulemaking Requirements Concerning Small Entities", <https://www.transportation.gov/regulations/rulemaking-requirements-concerning-small-entities> (last updated May 18, 2012).

²⁵ 65 FR 67249 (Nov. 6, 2000).

mechanical, or other technological collection techniques; and

(e) Ways the collection of this information is beneficial or not beneficial to public safety.

Send comments directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for the Department of Transportation, 725 17th Street NW, Washington, DC 20503. Comments should be submitted on or prior to October 18, 2024.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires agencies to assess the effects of federal regulatory actions on state, local, and tribal governments, and the private sector. For any NPRM or final rule that includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate of \$100 million or more (in 1996 dollars) in any given year, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the federal mandate. The proposed rule pertains to operators reimbursing PHMSA for the cost of conducting siting reviews of LNG facility project applications where the design and construction costs total \$2.5 billion or more. It only involves such applicants and PHMSA, and does not involve or pertain to state, local, and tribal governments. Further, as discussed in section V.B above, PHMSA does not anticipate the proposed rule will impose enforceable duties on state, local, and tribal governments or on the private sector of \$100 million or more (adjusted annually for inflation) in any one year. Therefore, the requirement to prepare a statement pursuant to UMRA does not apply.

G. National Environmental Policy Act and Environmental Justice

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*),²⁶ requires federal agencies to consider the environmental impacts of their actions in the decision-

making process. NEPA requires federal agencies to assess the environmental effects of proposed federal actions prior to making decisions and involve the public in the decision-making process. Agencies must prepare an environmental assessment (EA) for a proposed action for which a categorical exclusion is not applicable, and is either unlikely to have significant effects or when significance of the action is unknown. In accordance with these requirements, an EA must briefly discuss the need for the action; the alternatives considered; the environmental impacts of the proposed action and alternatives; and a listing of the agencies and persons consulted (40 CFR 1508.9(b)). If, after reviewing public comments in response to the draft EA (DEA), an agency determines that a proposed rule will not have a significant impact on the human or natural environment, it can conclude the NEPA analysis with a finding of no significant impact (FONSI).

1. Purpose and Need

The purpose of the proposed rule is to amend existing cost recovery regulations at part 190, subpart E, to establish procedures for assessment and recovery of its necessary expenses in performing 49 CFR part 193, subpart B, siting reviews of applications for new or expanded liquefied natural gas (LNG) facilities with project design and construction costs totaling at least \$2.5 billion, as mandated by the PIPES Act of 2020 (Pub. L. 116–260). The codification of these procedures within regulations is a prerequisite for PHMSA accessing funds appropriated by Congress for such reviews in the 2023 Act and any future appropriations legislation. The proposed rule is needed as PHMSA’s access to funds recovering the costs of its part 193, subpart B, siting reviews is critically important given the increasing strain placed on its limited resources by such reviews. Many of the same PHMSA personnel performing part 193, subpart B, siting reviews are also responsible for other regulatory oversight activities (*e.g.*, design safety reviews, inspections, enforcement, guidance and regulation development,

etc.) related to LNG facilities and other jurisdictional pipeline facilities. This need has become increasingly pressing in recent years, as PHMSA has had to perform a large number of part 193, subpart B, siting reviews.

2. Alternatives Considered

No Action Alternative:

The no action alternative would be to not make any changes to the current regulatory requirements. Existing regulations in 49 CFR part 190, subpart E, prescribe a fee structure and assessment methodology for recovering costs from design safety reviews of applications to FERC for new or expanded gas, LNG, hazardous liquid, and carbon dioxide pipeline facility projects consisting of new or expanded LNG facilities with project design and construction costs totaling at least \$2.5 billion. In this case, PHMSA would not collect fees directly from operators of LNG facilities to recover the necessary expenses incurred during part 193, subpart B, reviews. Additionally, the statutory mandate that Congress added in section 103 of the PIPES Act of 2020 would not be fulfilled.

Proposed Action Alternative (Proposed Rule):

This alternative implements the mandate in the PIPES Act of 2020 to amend the pipeline safety regulations (49 CFR parts 190–199) to prescribe a fee assessment methodology for PHMSA to recover its costs in performing 49 CFR 193, subpart B, siting reviews of applications for new or expanded LNG facilities with project design and construction costs totaling at least \$2.5 billion. PHMSA is proposing an up-front fee for estimated costs, derived from the personnel costs associated with historical work effort by PHMSA personnel involved in performing siting reviews for LNG facility project applications with design and construction costs of \$2.5 billion or more, coupled with “true-up” payments to PHMSA at conclusion of that review should PHMSA’s costs exceed the fee paid up-front based on PHMSA’s estimated costs. The proposed amendments are summarized below.

Section	Subject	Proposed changes
Part 190, Subpart E 190.401	Title Scope	Revise heading to: “Cost Recovery for Design Reviews and LNG Siting Reviews.” Redesignate the current regulatory text as paragraph (a), and add a new paragraph (b) to codify that PHMSA can recover its costs in conducting LNG facility siting reviews under part 193, subpart B.

²⁶ Also at 40 CFR parts 1501 to 1508.

Section	Subject	Proposed changes
190.403	Applicability	Introduce a new § 190.403(b) mirroring a statutory prohibition in the PIPES Act of 2020 barring PHMSA from collecting fees under multiple statutory authorities and their implementing regulations for the same LNG facility siting reviews. Add a new paragraph (d) identifying application materials PHMSA will typically review in connection with its part 193, subpart B, LNG facility siting reviews.
190.405	Notification	Redesignate existing text of § 190.405 as a new paragraph (a), and amend text to accommodate expanded application of those notification requirements to LNG facility siting reviews under part 193, subpart B. Add new paragraph (b) reserving discretion to delay review of submitted materials for LNG facility siting reviews until payment in full of the fee of the estimated costs for such review. Add new paragraph (c) requiring LNG facility applicants submit notification of any material changes to documentation submitted to PHMSA pursuant to § 190.405.
190.407	Master Agreement	Clarify revisions to the prefatory language of these provisions to distinguish between procedures for cost recovery in connection with design safety reviews (which will involve applicants entering into Master Agreements for such cost recovery), and part 193, subpart B, LNG facility siting reviews (which will not require applicants to enter into Master Agreements for such cost recovery).
190.409	Fee Structure	Revise introductory text to codify the basis of the fees PHMSA will charge to recover the costs for LNG siting reviews. Remove definitions of “necessary for” and all uses of the phrase since it has not clarified regulations as PHMSA intended.
190.411	Procedures for Billing and Payment of Fees.	Redesignate current prefatory text governing fees for a cost recovery in connection with facility design safety reviews as a new paragraph (a). Existing paragraphs (a)–(d) will then be redesignated as paragraphs (1)–(4) within new paragraph (a). Introduce a new paragraph (b) establishing the procedural machinery for billing and payment of fees for estimated costs for its LNG facility siting reviews before PHMSA initiates those reviews, as well as subsequent adjustment of those fees based on PHMSA’s actual costs for that review. Redesignate and clarify the disclaimer at existing paragraph (e) regarding PHMSA’s discretion to exercise its authorities under law to protect public safety and the environment as a new paragraph (c).

3. Affected Environment

Because the proposed rule only describes modifications to the cost recovery process, there would be no effect on environmental resources. Therefore, the affected environment does not include any environmental resources and only includes the existing regulatory framework related to cost recovery regulations at part 190, subpart E.

Existing regulations in 49 CFR part 190, subpart E, prescribe a fee structure and assessment methodology for recovering costs from design safety reviews of applications to FERC for new or expanded gas, LNG, hazardous liquid, and carbon dioxide pipeline facility projects consisting of new or expanded LNG facilities with project design and construction costs totaling at least \$2.5 billion.

PHMSA is also currently responsible for the review of LNG facility siting; that review is an input to FERC’s evaluation of applications for authorization to construct and operate a new LNG facility (or an expansion of an existing LNG facility). During the LNG facility siting review, PHMSA assesses the siting packages prepared by the applicants for new or expanded LNG facility projects for compliance with siting regulations at part 193, subpart B.

4. Environmental Impacts of Alternatives

No Action Alternative:

The No Action Alternative would have no new impact on the natural or human environment as the status quo would remain in place. PHMSA would continue to recover costs from design safety reviews of applications for new or expanded gas, LNG, hazardous liquid, and carbon dioxide pipeline facility projects consisting of new or expanded LNG facilities with project design and construction costs totaling at least \$2.5 billion. PHMSA would not collect fees directly from operators of LNG facilities to recover the necessary expenses incurred during part 193, subpart B, reviews, and the current and ever-increasing strain placed on PHMSA’s limited resources by such reviews would not be alleviated.

The No Action Alternative does not include any activities, such as ground disturbing activities, building or landscape alterations, construction or installation of any new aboveground components, or the introduction of visual, auditory, or atmospheric elements. Therefore, the proposed rule would not adversely affect, either temporarily or permanently, historic resources and/or cultural resources, ecological resources, wetlands and waterways, or farmland.

Proposed Action Alternative (Proposed Rule):

PHMSA recognizes the difficulty in quantifying any environmental impact of prescribing a fee assessment methodology for PHMSA to recover its costs in performing 49 CFR 193, subpart B, siting reviews of applications for new or expanded LNG facilities with project design and construction costs totaling at least \$2.5 billion. The Proposed Action Alternative would have no adverse impact on the natural or human environment because the changes proposed would not adversely impact the process of the part 193, subpart B, reviews, nor would it affect the siting, construction, operations, or other management practices of LNG facilities. The proposed rule would only affect the cost recovery process itself.

That said, PHMSA notes that its access to funds recovering the costs of its part 193, subpart B, siting reviews is critically important given the increasing strain placed on its limited resources by such reviews. Part 193, subpart B, covers siting requirements of LNG facilities—including thermal radiation protection, flammable vapor-gas dispersion protection, and wind forces—to ensure LNG facilities operate at approved national safety standards. By directly recovering costs, PHMSA could relieve some of the strain on its limited personnel resources, allowing

for not only more efficient and high-quality reviews, but also ensuring resources would not be diverted from other critical regulatory oversight functions that advance the safety of gas, hazardous liquid, LNG, and carbon dioxide pipeline facilities. However, because it is not clear which activities would go unfunded due to the costs of conducting LNG facility siting reviews, PHMSA is unable to quantify those benefits with a meaningful degree of certainty.

The Proposed Action Alternative (proposed rule) would not include any activities such as ground disturbing activities; building or landscape alterations; construction or installation of any new aboveground or belowground components; or the introduction of visual, auditory, or atmospheric elements. Therefore, the proposed rule would not adversely affect, either temporarily or permanently historic resources and/or cultural resources, ecological resources, wetlands and waterways, or farmland. Further, because this alternative only includes procedures related to cost recovery, this alternative would have no direct or indirect effect on greenhouse gas emissions.

PHMSA's proposed fees for LNG facility part 193, subpart B, siting reviews would be a new line-item cost for certain applicants. Given the reduced frequency of the required siting reviews and assuming the work effort remains static over the 10-year forecast period, the rule would result in an additional burden of approximately \$3.48 million over 10 years, as described in Section V.B. of this NPRM. This is discounted to \$3.22 million using a two percent rate, and the annualized cost is \$358,589. However, PHMSA's projections for the fees paid by applicants for each LNG facility siting review would be trivial (ca. 0.0024 percent) compared to the minimum design and construction costs for pertinent projects. Further, PHMSA has designed its proposed approach to imposing fees in a way that maximizes regulatory certainty for affected entities. PHMSA's timely access to adequate financial resources to perform part 193, subpart B, siting reviews as those reviews initiate also benefits project applicants by facilitating timely completion of such reviews. PHMSA expects these new costs would only be shouldered by a small number of entities. Consistent with the threshold identified in 49 U.S.C. 60303, the NPRM proposes fees for cost recovery for only very large LNG facility new construction or expansion projects—specifically, fees would only be assessed for LNG facility

siting reviews for project applications with design and construction costs totaling or exceeding \$2.5 billion. And PHMSA expects continued, although decreased, demand for such reviews during the analysis period.

5. Environmental Justice

Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”²⁷), directs federal agencies to take appropriate and necessary steps to identify and address disproportionately high and adverse effects of federal actions on the health or environment of minority and low-income populations to the greatest extent practicable and permitted by law. DOT Order 5610.2C (“U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) establishes departmental procedures for effectuating Executive Order 12898 promoting the principles of environmental justice through full consideration of environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities—including PHMSA rulemaking.

Executive Order 14096 (“Revitalizing Our Nation’s Commitment to Environmental Justice for All”²⁸) was issued on April 21, 2023. Executive Order 14096 on environmental justice does not rescind Executive Order 12898, which has been in effect since February 11, 1994, and is currently implemented through DOT Order 5610.2C. This implementation will continue until further guidance is provided regarding the implementation of the new Executive Order 14096 on environmental justice.

Through the NEPA process, PHMSA has evaluated this NPRM under DOT Order 5610.2C and Executive Order 12898, and has preliminarily determined it would not cause disproportionately high and adverse human health and environmental effects on minority and low-income populations. The proposed rule would not result in any adverse environmental or health impact on minority populations and low-income populations. As explained in this DEA above, the proposed action would not impact the technical requirements associated with the siting requirements described at part 193, subpart B. The Proposed Action Alternative only affects the cost recovery process, which would

result in no ground disturbance, building or landscape alterations, or construction activities of any kind. Therefore, no impacts to environmental justice populations would occur. This preliminary finding is consistent with Executive Order 14096 by achieving several goals, including continuing to deepen the Biden-Harris Administration’s whole of government approach to environmental justice and to better protect overburdened communities from pollution and environmental harms.

6. Public Involvement

Public involvement is a key component of the NEPA process. This DEA and the proposed rule will be released for public review and comment in docket PHMSA–2022–0118. To access the docket, which contains background documents and any comments that PHMSA has received, go to <https://www.regulations.gov>. Follow the online instructions for accessing the docket. Alternatively, you may review the documents in person at DOT’s Docket Management Office at the address listed below.

E-Gov Web: <http://www.regulations.gov>. This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.

Mail: Docket Management System: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: DOT Docket Management System: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9:00 a.m. and 5:00 p.m. EST, Monday–Friday, except federal holidays.

7. Agencies and Persons Consulted

No other agencies or persons were consulted during development of this Draft Environmental Assessment.

8. List of Preparers and Reviewers

Preparers: Lydia Wang, PHMSA
Reviewers: Sandy Hoover, Volpe Center

9. Proposed Finding of No Significant Impact

PHMSA is soliciting comments on the environmental and safety impacts of the proposed rule and on this DEA. PHMSA will respond to the comments received during the comment period and will address comments in the final environmental assessment (FEA). If a determination of no significant impact is made, PHMSA will prepare a FONSI, which would be attached to the FEA

²⁷ 59 FR 7629 (Feb. 16, 1994).

²⁸ 88 FR 25251.

and would conclude the NEPA process for this rulemaking.

G. Executive Order 13132: Federalism

PHMSA has analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”)²⁹ and the Presidential Memorandum³⁰ titled “Preemption.” Executive Order 13132 requires agencies to ensure meaningful and timely input by state and local officials in the development of regulatory policies that may have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

States are generally prohibited by 49 U.S.C. 60104(c) from regulating the safety of interstate pipelines. States that have submitted a current certification under 49 U.S.C. 60105(a) and that adopt the minimum federal pipeline safety requirements may regulate intrastate pipelines within the state. Those states may also adopt additional or more stringent safety standards for intrastate pipelines if those standards are compatible with the federal requirements. A state may also regulate an intrastate pipeline facility that PHMSA does not regulate.

In this instance, the proposed rule would not impose any regulation that 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. Therefore, PHMSA has determined that the consultation and funding requirements of Executive Order 13132 do not apply.

H. Executive Order 13211: Significant Energy Actions

Executive Order 13211 (“Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use”)³¹ requires federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” Executive Order 13211 defines a “significant energy action” as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order; and (ii) is likely to have a significant adverse

effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action.

This proposed rule is not anticipated to be a “significant energy action” under Executive Order 13211. It is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, OIRA has not designated this proposed rule as a significant energy action.

I. Privacy Act Statement

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 <https://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 Federal Docket Management System), which can be reviewed at <https://www.dot.gov/privacy>.

J. Regulation Identifier Number

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

K. Executive Order 13609 and International Trade Analysis

Executive Order 13609 (“Promoting International Regulatory Cooperation”)³² requires agencies to consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits federal agencies from establishing any

standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, federal agencies may participate in the establishment of international standards so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they serve as the basis for U.S. standards.

PHMSA participates in the establishment of international standards to protect the safety of the American public. PHMSA assessed the effects of the proposed rule and determined that it will not cause unnecessary obstacles to foreign trade.

L. Cybersecurity and Executive Order 14028

Executive Order 14028 (“Improving the Nation’s Cybersecurity”)³³ directed the Federal Government to improve its efforts to identify, deter, and respond to “persistent and increasingly sophisticated malicious cyber campaigns.” In keeping with these policies and directives, PHMSA has assessed the effects of this NPRM to determine what impact the proposed regulatory amendments may have on cybersecurity risks for LNG facilities, and has preliminarily determined that this NPRM will not materially affect the cybersecurity risk profile for those facilities.

This proposed rule will establish fee structures and assessment methodology for recovering costs associated with siting reviews of certain new LNG facility project applications. Those reviews occur in the status quo; this rulemaking merely formalizes notification practices and establishes procedures for calculation and forwarding of (estimated and actual) fees to recover PHMSA’s costs in performing those reviews. PHMSA envisions that entities paying the fees proposed herein will have the option of doing so by either check or the Federal Government’s centralized fee payment website (<https://pay.gov>). PHMSA does not expect, therefore, that the NPRM’s proposed regulatory amendments will entail the electronic transfer of sensitive or confidential business information of the sort that could materially affect applicants’ cybersecurity risk profiles.

²⁹ 64 FR 43255 (Aug. 10, 1999).

³⁰ 74 FR 24693 (May 22, 2009).

³¹ 66 FR 28355 (May 22, 2001).

³² 77 FR 26413 (May 4, 2012).

³³ 86 FR 26633 (May 17, 2021).

M. Severability

The purpose of this proposed rule is to operate holistically and, in concert with existing part 190, subpart E, requirements, provide for cost recovery of part 193, subpart B, siting reviews for certain LNG facility project applications. However, PHMSA recognizes that certain provisions focus on unique topics. Therefore, PHMSA preliminarily finds that the various provisions of this proposed rule are severable and able to operate functionally if severed from each other. In the event a court were to invalidate one or more of the unique provisions of any final rule issued in this proceeding, the remaining provisions should stand, thus allowing their continued effect. PHMSA seeks comment on which portions of this rule should or should not be severable.

List of Subjects in 49 CFR Part 190

Cost recovery, Liquefied natural gas.

For the reasons provided in the preamble, PHMSA proposes to amend 49 CFR part 190 as follows:

PART 190—PIPELINE SAFETY ENFORCEMENT AND REGULATORY 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.*

- 2. Revise the subpart heading of subpart E to read as follows:

Subpart E—Cost Recovery for Design Reviews and LNG Siting Reviews

- 3. Revise § 190.401 to read as follows:

§ 190.401 Scope.

(a) If PHMSA conducts a facility design and/or construction safety review or inspection in connection with a proposal to construct, expand, or operate a (gas, hazardous liquid, carbon dioxide, or a liquefied natural gas) pipeline facility that meets the applicability requirements in § 190.403, PHMSA may require the applicant proposing the project to pay the costs incurred by PHMSA relating to such review, including the cost of design and construction safety reviews or inspections.

(b) If PHMSA conducts a siting review in connection with a proposal to construct, expand, or operate an LNG facility that meets the applicability requirements in § 190.403, PHMSA will require the applicant proposing the project to pay the costs incurred by PHMSA relating to such review,

including the cost of LNG facility siting reviews or related inspections.

- 4. Amend § 190.403 by revising paragraphs (a)(1)(ii), (b), (c), and adding paragraphs a(1)(iii) and (d) to read as follows:

§ 190.403 Applicability.

* * * * *

(a) * * *

(1) * * *

(ii) A good faith estimate developed by the applicant proposing a gas (including LNG), hazardous liquid, or carbon dioxide pipeline facility and submitted to the Associate Administrator.

(iii) The good faith estimates for design and construction costs provided for in this section must include all the applicable cost items contained in the Federal Energy Regulatory Commission application referenced in § 190.403(a)(1)(i) for a gas facility. In addition, an applicant must take into account all survey, design, material, permitting, right-of-way acquisition, construction, testing, commissioning, start-up, construction financing, environmental protection, inspection, material transportation, sales tax, project contingency, and all other applicable costs, including all segments, facilities, and multi-year phases of the project;

* * * * *

(b) The Associate Administrator may collect neither (i) separate facility design safety review fees under both this section and 49 U.S.C. 60301 for the same design safety review, nor (ii) separate LNG facility siting review fees under either this section, 49 U.S.C. 60117(o), or 49 U.S.C. 60301(b) for the same LNG facility siting review.

(c) For facility design safety reviews, the Associate Administrator, after receipt of the design specifications, construction plans and procedures, project schedule, and related materials (including estimated project design and construction costs), determines if cost recovery is necessary. The Associate Administrator's determination is based on the amount of PHMSA resources needed to ensure safety and environmental protection.

(d) For LNG facility siting reviews, the Associate Administrator, after receipt of the design specifications, siting specifications, construction plans and procedures, project schedule, and related materials (including estimated project design and construction costs), shall provide the applicant PHMSA's estimated costs for each review. The Associate Administrator's estimate will be based on the amount of PHMSA resources needed to ensure safety and

environmental protection, and will be calculated pursuant to § 190.411(b).

- 5. Revise § 190.405 to read as follows:

§ 190.405 Notification.

(a) For new pipeline facility project application for which PHMSA will conduct a facility design safety review or LNG facility siting review, the applicant proposing the project must notify PHMSA and provide the design specifications, construction plans and procedures, siting specifications, project schedule, and related materials (including estimated project design and construction costs) as applicable, at least 120 days prior to the commencement of any of the following activities: Route surveys for construction, material manufacturing, offsite facility fabrications, construction equipment move-in activities, onsite or offsite fabrications, personnel support facility construction, and any offsite or onsite facility construction. To the maximum extent practicable, but not later than 90 days after receiving such design specifications, construction plans and procedures, siting packages, and related materials, PHMSA will provide written comments, feedback, and guidance on the project.

(b) For LNG facility siting reviews, PHMSA review will not commence until receipt of payment in full of the estimated costs of each review provided by the Associate Administrator as provided in this subpart.

(c) Applicants for LNG facility projects for which PHMSA is performing siting reviews must promptly notify PHMSA of any material changes to the application or estimated design and construction costs that would cause the project to meet or exceed the monetary threshold specified in § 190.403(a). Failure to do so could result in PHMSA requiring the operator to resubmit or revise materials provided for PHMSA's review.

- 6. Revise § 190.407 to read as follows:

§ 190.407 Master Agreement.

For facility design safety reviews for which the Associate Administrator has determined cost recovery is necessary, PHMSA and the applicant will enter into an agreement within 60 days after PHMSA receives notification from the applicant provided in § 190.405, outlining PHMSA's recovery of the costs associated with that review.

(a) A Master Agreement, at a minimum, includes:

- (1) Itemized list of costs;
- (2) Statement of the scope of work for conducting the facility design safety review and an estimated total cost;

(3) Description of the method of periodic billing, payment, auditing of cost recovery fees, return of any unused fees collected;

(4) Minimum account balance which the applicant must maintain with PHMSA at all times;

(5) Provisions for reconciling differences between total amount billed and the final cost of the design review, including provisions for returning any excess payments to the applicant at the conclusion of the project;

(6) Point of contact for both PHMSA and the applicant;

(7) Provisions for terminating the agreement; and

(8) A project reimbursement cost schedule based upon the project timing and scope.

■ 7. Revise and republish § 190.409 to read as follows:

§ 190.409 Fee structure.

The fee charged is based on, as applicable, the direct costs that PHMSA incurs in conducting the facility design safety review (including construction review and inspections) or LNG facility siting review (including field verification and inspections).

(a) Costs qualifying for cost recovery include, but are not limited to—

- (1) Personnel costs;
- (2) Travel, lodging, and subsistence related to the review;
- (3) Vehicle mileage;

(4) Other direct services, materials, and supplies; and

(5) Other direct costs as may be specified with advanced notice.

(b) [Reserved].

■ 8. Amend § 190.411 by revising paragraphs (a), (b), and (c) to read as follows:

§ 190.411 Procedures for billing and payment of fee.

* * * * *

(a) For Facility Design Safety Reviews:

(1) PHMSA bills an applicant for estimated design safety review fees as specified in the Master Agreement.

(2) PHMSA bills an applicant for estimated design safety review cost recovery fees as specified in the Master Agreement, but the applicant will not be billed more frequently than quarterly.

(A) PHMSA will itemize design safety review bills in sufficient detail to allow independent verification of calculations.

(B) [Reserved]

(3) PHMSA will monitor the applicant's account balance. Should the account balance fall below the required minimum balance specified in the Master Agreement, PHMSA may request at any time the applicant submit payment within 30 days to maintain the minimum balance.

(4) PHMSA will provide an updated estimate of costs to the applicant on request and when the project is completed.

(5) Payment of design safety review fees is due within 30 days of issuance of a bill for the fees. If payment is not made within 30 days, PHMSA may charge an annual rate of interest (as set by the Department of Treasury's Statutory Debt Collection Authorities) on any outstanding debt, as specified in the Master Agreement.

(b) For each LNG siting review:

(1) PHMSA will, as soon as practicable following notification pursuant to § 190.405, provide a bill for estimated LNG facility siting review costs PHMSA will incur in performing each siting review. That estimated cost will be the sum (rounded to the nearest thousand) of the products of (i) the hours historically spent by PHMSA Senior Executive Service and General Schedule personnel identified in the table below in performing those reviews for LNG facility projects meeting or exceeding the monetary threshold at § 190.403(a)(1); and (ii) the hourly rates of those personnel calculated from the Office of Personnel Management Annual Salary Tables for Senior Executive Service and General Schedule employees in the Washington/Baltimore/Arlington area effective as of the date of the invoice, each adjusted to account for non-salary benefits which are estimated to make up 38 percent of total personnel costs:³⁴

Title	Pay grade (step)	Hours
Deputy Associate Administrator	SES-Max	5
Director	GS-15(5)	10
Supervisory General Engineer	GS-14(5)	68
General Engineer (Lead)	GS-14(5)	420
General Engineer (Support)	GS-9(5)	40
Technical Writer	GS-9(5)	1
Attorney Advisor Manager	GS-15(5)	1
Staff Attorney Advisor	GS-14(5)	8

Payment is due upon receipt of the bill for the estimated costs specified. PHMSA review will not commence until receipt of payment in full.

(2) If actual costs identified in § 190.409 exceed the estimated costs paid to PHMSA by the operator pursuant to the above paragraph,

PHMSA will, at the conclusion of each review (but before PHMSA issues a determination regarding compliance with part 193, subpart B, siting requirements) notify and provide the applicant an itemized bill of the actual costs owed. The operator must pay to PHMSA the difference between the estimated costs and actual costs upon receipt of the itemized bill of actual costs. PHMSA may withhold its determination regarding compliance with part 193, subpart B, siting requirements until receipt of such payment.

(c) Payment of the review fees as provided in this subpart shall not

obligate or prevent PHMSA from exercising its authority to take actions permitted by law to protect public safety and the environment in response to its review of materials or inspections conducted within its facility design safety or part 193, subpart B, LNG facility siting reviews.

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Alan K. Mayberry,
Associate Administrator for Pipeline Safety.

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³⁴ PHMSA uses BLS estimates for state and local government employee compensation as a proxy for federal government employee compensation (obtained from <https://www.bls.gov/news.release/pdf/ecec.pdf>, last accessed March 15, 2024). Wages are estimated to make up 62 percent of employee compensation, with non-wage benefits making up the remaining 38 percent. Equivalently, non-wage benefits are valued at approximately 61 percent of wages (1/0.62 = 1.61).