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The Code of Federal Regulations is sold by the Superintendent of Documents.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2026–2806]

RIN 3150–AL72

List of Approved Spent Fuel Storage Casks: TN Americas, LLC: Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel, Certificate of Compliance No. 1004, Renewed Amendment No. 19

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of November 9, 2026, for the direct final rule that was published in the **Federal Register** on August 26, 2026. This direct final rule amended the TN Americas, LLC Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 19 to Certificate of Compliance No. 1004. Amendment No. 19 revises the certificate of compliance to provide for a 61BTH improved basket design using staggered plates similar the 24PTH Type 3 basket approved in CoC 1004 Amendment 18 and similar to the EOS 37PTH and 89BTH baskets approved in CoC 1042. This will simplify construction, reduce weight and improve fabricability. Additional changes are proposed to address editorial corrections, consistency, and terminology clarifications.

DATES: The effective date of November 9, 2026, for the direct final rule published August 26, 2026 (91 FR 54941), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2026–2806 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Electronically at *https://www.regulations.gov.* Search for Docket ID NRC–2026–2806. Address questions about NRC dockets to Helen Chang; telephone: 301–415–3228; email: *Helen.Chang@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin ADAMS Public Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The proposed amendment to the certificate of compliance, the proposed changes to the technical specifications, and the preliminary safety evaluation report are available in ADAMS under Accession No. ML26103A250 (package). The final amendment to the certificate of compliance, final changes to the technical specifications, and final safety evaluation report can also be viewed in ADAMS under Accession No. ML26282A009 (package).
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Heath Stroud, Office of Nuclear Material Safety and Safeguards, telephone: 301–287–3664, email: *Heath.Stroud@nrc.gov;* and Tim Mossman, Office of Nuclear Material Safety and Safeguards, telephone: 301–287–9100, email: *Timothy.Mossman@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On August 26, 2026 (91 FR 54941), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* to revise the TN Americas, LLC Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel, Certificate of Compliance No. 1004 within the ''List of approved spent fuel storage casks'' to include Amendment No. 19.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on November 9, 2026. The NRC received and docketed three comment submissions on the companion proposed rule (91 FR 55028; August 26, 2026). An electronic copy of the comments can be obtained from the Federal Rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2026–2806 and is also available in ADAMS under Accession No. ML26286A192. The NRC evaluated the comments against the criteria described in the direct final rule and determined that the comments were not significant and adverse. Specifically, one commenter mentions higher heat load as a significant change. This higher heat load was reviewed by the NRC and is documented in section 5.1.1 of the safety evaluation report (SER) and determined to be acceptable. Another commenter questioned the lack of site-specific analyses. However, specific environmental assessments are not required as 10 CFR 51.22(a)(12) contains a categorical exclusion. The same commenter challenged that the changes would create appreciable differences in performance of the cask; however, the staff evaluated all proposed changes and documented the results in the SER.

Other comments were outside the scope of this rulemaking and did not oppose the rule; propose a change or an addition to the rule; or cause the NRC to make a change to the rule, the certificate of compliance, or the technical specifications. Therefore, this direct final rule will become effective as scheduled.

Dated: October 30, 2026.

For the Nuclear Regulatory Commission.

Araceli Billoch Colon,

Chief, Rulemaking Projects Branch 2, Division of Guidance, Rulemaking, Economic Analysis, and Technical Editing, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2026–22421 Filed 11–2–26; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

Compliance Procedure (52 U.S.C. 30109, 30107(a))

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In Title 11 of the Code of Federal Regulations, revised as of January 1, 2026, in section 111.24, in paragraph (a)(2)(ii), remove ''$84,852'' and add ''$87,056'' in its place, and in paragraph (b), remove ''$7,455'' and add ''$7,445'' in its place.

[FR Doc. 2026–22402 Filed 11–2–26; 8:45 am]

BILLING CODE 0099–10–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2026–7525; FRL–5948.4–01–OAR]

National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendment.

SUMMARY: The Environmental Protection Agency (EPA) is making a correction to the National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants (Lime Manufacturing NESHAP) technology review final rule that appeared in the **Federal Register** on July 16, 2024. Following publication of this final rule, the EPA discovered an inadvertent error in the regulatory text and is correcting the error in this action.

DATES: The final rule is effective on November 3, 2026.

ADDRESSES: The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2026–0725. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov/.* The public cannot download certain databases and physical items from the docket but may request these items by contacting the docket office at (202) 566–1744. The docket office has 10 business days to respond to such requests. With the exception of such material, publicly available docket materials are available electronically at *https://www.regulations.gov* or on EPA computers in the docket office reading room at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. ET, Monday through Friday (except for Federal holidays). The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information about this action, contact U.S. EPA, Attn.: Haley Turner, Natural Resources Division, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0173; and email address: *turner.haley@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA finalized the Lime Manufacturing NESHAP technology review on July 16, 2024.[1] Following publication of this final rule, the EPA discovered an error in the regulatory text and is correcting the error in this action.

Specifically, the EPA is revising the Lime Manufacturing NESHAP July 16, 2024, final rule (2024 final rule) to correct 40 Code of Federal Regulations (CFR) part 63 section 7114. In the 2024 final rule amendatory text, 40 CFR 63.7114 was revised to include two new paragraphs describing the requirements for the emissions averaging compliance option. These additions were added to the section as paragraphs (b) and (c). Paragraph (c)(2) instructs lime manufacturing plants that chose to comply with emissions averaging for HCl or mercury to develop and submit to the applicable regulatory authority for review and approval, an implementation plan for emission averaging no later than 180 days before the date the facility intends to demonstrate compliance. The EPA is revising the 180-day plan submittal requirement to 60 days, as the Agency intended. In the 2024 final rule preamble, under section *E. What other changes have been made to the NESHAP?,* the EPA explains that the deadline for submitting the emissions averaging plan before the compliance demonstration was adjusted from 180 days, as proposed, to 60 days. Following publication of the 2024 final rule, the EPA discovered the regulatory text was not updated to reflect this change.

The correction in this action makes the regulatory text consistent with what the preamble to the 2024 final rule describes. The EPA's authority for the rulemaking procedures followed in this action is provided by the Administrative Procedure Act (APA), 5 U.S.C. 553. In general, an agency issuing a rule must provide prior notice and an opportunity for public comment, but APA section 553(b)(B) includes an exemption from notice-and-comment requirements ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because the changes to the rule are minor, noncontroversial in nature, and correct an inadvertent typographical error. The change aligns regulatory text with the EPA's expressed intent in the 2024 final rule preamble and does not substantively change the requirements of the 2024 final rule except to the extent necessary to align the regulatory text with the EPA's intent, which the preamble expressly states. Thus, the corrected regulatory text in this action has already had notice and opportunity for public comment, rendering further notice and opportunity for public comment unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

For a complete discussion of all the statutes, executive orders and administrative requirements applicable to this action, see the final rule published in the Rules and Regulations section of the **Federal Register** (89 FR 57738).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances,

[1] 89 FR 57738.

Intergovernmental relations, Reporting and recordkeeping requirements.

Abigale D. Tardif,

Acting Assistant Administrator, Office of Air and Radiation.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 63 of title 40, chapter I, of the Code of Federal Regulations as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AAAAA—National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants

■ 2. Amend § 63.7114 by revising paragraph (c)(2) introductory text to read as follows:

§ 63.7114 How do I demonstrate initial compliance with the emission limitations standard?

* * * * *

(c) * * *

(2) You must develop and submit to the applicable regulatory authority for review and approval, an implementation plan for emission averaging no later than 60 days before the date you intend to demonstrate compliance using the emission averaging option. You must include the information contained in paragraphs (c)(2)(i) through (iii) of this section in your implementation plan.

* * * * *

[FR Doc. 2026–22404 Filed 11–2–26; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 84

RIN 0945–AA27

Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance

AGENCY: Office for Civil Rights (OCR), Office of the Secretary, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS or Department) issues this rule to revise the regulation implementing section 504 of the Rehabilitation Act of 1973 (section 504) as it applies to recipients of HHS funding (entitled ''Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance,'' (''2024 Final Rule'')), published on May 9, 2024. This rule clarifies that the Department interprets the statutory exclusion of ''gender identity disorders not resulting from physical impairments'' from the terms ''individual with a disability'' and ''disability'' set forth in our regulations to encompass ''gender dysphoria not resulting from a physical impairment'' for purposes of the regulation. This clarification is necessary to resolve ambiguity introduced in the preamble to the 2024 Final Rule and to ensure compliance with the best reading of the governing statute.

DATES: This rule is effective January 4, 2027.

FOR FURTHER INFORMATION CONTACT: John Thompson, Office for Civil Rights, Department of Health and Human Services at (202) 545–4884 or (800) 537–7697 (TDD), or via email at *504@hhs.gov.*

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III. Response to Public Comments on the Proposed Rule
IV. Executive Order 12866 and Related Executive Orders on Regulatory Review

I. Background

Section 504 of the Rehabilitation Act of 1973 (section 504) prohibits discrimination on the basis of disability in programs and activities that receive Federal financial assistance as well as in programs and activities conducted by any Federal agency.

The Office for Civil Rights (OCR) in the United States Department of Health and Human Services (HHS or the Department) enforces section 504 as well as other statutes that prohibit discrimination on the basis of disability.

Congress passed the Rehabilitation Act in 1973, and what was then the U.S. Department of Health, Education, and Welfare issued regulations to implement section 504 in 1977. In the following decades, major legislative and judicial developments shifted the legal landscape of disability discrimination protections under section 504. Those developments include multiple statutory amendments to the Rehabilitation Act, the enactment of the Americans with Disabilities Act of 1990 (ADA) and ADA Amendments Act of 2008 (ADAAA), passage of the Affordable Care Act (ACA), and Supreme Court and other significant court cases.

On May 9, 2024, the Department issued the 2024 Final Rule [1] to modernize and clarify its regulations implementing section 504 for recipients of HHS financial assistance mainly due to those developments. As relevant here, the preamble to the 2024 Final Rule discussed whether ''gender dysphoria may constitute a disability under section 504.'' [2] The 2024 Final Rule concluded, in its preamble, that ''gender dysphoria does not fall with the statutory exclusions for gender identity disorders.'' [3] The codified regulatory text defining the term ''disability'' cross-referenced the statutory exclusion in 29 U.S.C. 705(20)(F) [4] and was silent on whether gender dysphoria may be a disability under section 504.[5]

In April of 2025, the Department published a clarification in the **Federal Register**, 90 FR 15412 (Apr. 11, 2025) (2025 Notice), regarding the 2024 Final Rule preamble language that addressed whether gender dysphoria may constitute a disability under section 504. The notice expressed the Department's concern that ''there has been significant confusion about the preamble language referencing gender dysphoria in the'' 2024 Final Rule.[6] The notice clarified that the 2024 Final Rule ''does not say that gender dysphoria is a disability'' and that the preamble language ''does not have the force or effect of law'' and ''cannot be enforced.'' [7]

The Proposed Rule

On December 19, 2025, the Department published a proposed rule to amend 45 CFR part 84, Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.[8] The proposed rule sought to resolve the ambiguity that the Department's April 2025 Notice

[1] 89 FR 40066 (May 9, 2024).

[2] 89 FR at 40069.

[3] *Id.*

[4] Under section 504, ''the term 'individual with a disability' does not include an individual on the basis of—(i) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders; . . . .'' 29 U.S.C. 705(20)(F)(i).

[5] *See* 45 CFR 84.4(g) (2024 Rule) (''Exclusions. The term 'disability' does not include the terms set forth at 29 U.S.C. 705(20)(F)'').

[6] 90 FR 15412.

[7] *Id.*

[8] 90 FR 59478 (Dec. 19, 2025).

identified by ensuring compliance with the best reading of section 504.

The rule proposed to clarify part of the regulatory definitions of ''disability'' and ''individual with a disability'' through the best reading of the relevant statutory provisions.[9] As defined in statute, the terms ''individual with a disability'' and ''disability'' exclude ''transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.[10] The proposed rule interpreted ''gender identity disorders not resulting from physical impairments'' to encompass ''gender dysphoria not resulting from a physical impairment'' for purposes of the 2024 Final Rule's definitions of ''individual with a disability'' and ''disability.'' [11]

The proposed rule described the relevant statutory framework and history for the definition of disability in section 504.[12] The proposed rule explained that Congress amended the Rehabilitation Act more than once to align its key definitions with those in the ADA and subsequent amendments to the ADA.[13] The terms ''disability'' and ''individual with a disability'' in section 504 are such definitions that Congress aligned.[14] Congress enacted the exclusion of ''gender identity disorders not resulting from physical impairments'' in the ADA in 1990 [15] and aligned that definition in the Rehabilitation Act in 1992.[16]

Neither section 504 nor the ADA define ''gender identity disorders'' in the statutory exclusion from the terms ''disability'' and ''individual with a disability.'' [17] The proposed rule reasoned that ''the term must be given the 'ordinary meaning' it had at the time of its adoption.'' [18] The proposed rule documented and summarized the relevant medical diagnostic history of the term ''gender identity disorders'' at the time Congress excluded ''gender identity disorders not resulting from physical impairments'' [19] from these definitions. The Department relied on the revised third edition of the American Psychiatric Association's Diagnostic and Statistical Manual (DSM–III–R) from 1987, which was the edition in effect during 1990 and 1992 when Congress enacted the statutory exclusions in the ADA and the Rehabilitation Act.[20]

The proposed rule also documented and summarized the relevant medical diagnostic history of the term ''gender identity disorders'' in the fourth edition of the DSM (DSM–IV) released in 1994 and the term ''gender dysphoria'' in the fifth edition of the DSM released in 2013 (DSM–5).[21] The Department acknowledged that, while later editions of the DSM may be relevant, ''evolving medical classifications of gender disorders cannot change the meaning of the statutory language.'' [22]

Overview of Public Comments

The Department sought comments on the proposed rule. The comment period was set to end on January 20, 2026. Due to technical issues and numerous commenters requesting a sixty (60) rather than thirty (30) day comment period, in part because the comment period overlapped with end of the year holidays and scheduled vacations, the Department extended the comment period to February 20, 2026.

The Department received over 380 comments in response to the proposed rule. A wide range of individuals and organizations submitted comments, including private citizens, health care workers and institutions, educators, disability advocacy organizations, faith-based organizations, professional associations, state Attorneys General, and members of Congress. These comments were divided in support for and opposition to the proposed rule, and the Department reviewed and analyzed all of the comments.

II. Overview of the Final Rule

The text of the final rule is unchanged from the proposed rule.

This rule clarifies that the Department interprets the statutory exclusion of ''gender identity disorders not resulting from physical impairments'' from the terms ''individual with a disability'' and ''disability'' set forth at 29 U.S.C. 705(9) & (20)(F)(i), and 42 U.S.C. 12211(b), to encompass ''gender dysphoria not resulting from a physical impairment'' for purposes of part 84. This clarification is necessary to resolve ambiguity introduced in the preamble to the 2024 Final Rule and to ensure compliance with the best reading of the statute.

III. Response to Public Comments

The Department has summarized public comments and responses to those comments into 12 categories:

- general comments;
- comments on the Department's authority for this final rule;
- comments on the interaction of the rule with other laws and legal principles;
- comments on administrative procedure;
- comments on regulatory history and caselaw;
- comments on the need for the proposed rule;
- comments on the definition of disability;
- comments on the meaning of statutory language;
- comments on reliance interests;
- comments on the progression of definitions in the DSM;
- comments on regulatory alternatives; and
- comments on potential federalism implications.

General Comments [23]

Comments: Several commenters expressed support for the proposed rule because they believe that the rule will ensure that only people with ''legitimate disabilities'' receive legal protections under section 504. Some expressed their belief that gender dysphoria is ''illegitimate'' and based on an internal sense of psychological self rather than a ''true disability.''

Response: The Department notes that this rulemaking is based on an interpretation of the exclusions to the term ''individual with a disability'' at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) and does not make a judgment on whether gender dysphoria not resulting from physical impairments is ''legitimate'' or a ''true disability.''

Comments: A group of commenters expressed support for the proposed rule based on the belief that if gender dysphoria could be a disability under section 504, clinicians would be required to provide sex-rejecting procedures and counseling to patients to treat such gender dysphoria under the theory that preventing, limiting, or

[9] The statutory exclusions relevant to these terms are set forth at 29 U.S.C. 705(20)(F)(i), 42 U.S.C. 12211(b).

[10] 29 U.S.C. 705(9) & (20)(F)(i), 42 U.S.C. 12211(b)(1).

[11] 90 FR at 59480–82.

[12] *See* 90 FR at 59478–79 (describing relevant Congressional action).

[13] *See* 90 FR at 59478–79 (describing statutory history).

[14] *See* 90 FR at 59479 (describing statutory history).

[15] Americans with Disabilities Act of 1990, Public Law 102–569, tit. V, sec. 511(b), 104 Stat. 327 (1990) (codified at 42 U.S.C. 12211(b)).

[16] Rehabilitation Act Amendments of 1992, Public Law 102–569, sec. 102(f)(4), 106 Stat 4344 (codified at 29 U.S.C. 705(20)(F)).

[17] 90 FR at 59480.

[18] 90 FR at 59480 (citations omitted).

[19] 90 FR at 59479.

[20] 90 FR at 59479.

[21] *See* 90 FR at 59479 (comparing and evaluating text from each edition).

[22] 90 FR at 59482.

[23] When phrases appear in quotation marks in the Department's summary of comments, the phrase as it appears in the comment summary was used in the comment(s) being summarized.

interfering with such procedures may amount to disability discrimination. Some commenters also stated that if gender dysphoria is considered a disability under section 504, then the Department considers such gender dysphoria to amount to an immutable characteristic. Accordingly, clinicians may feel constrained from practicing medicine in a manner that aligns with their personal beliefs. Some commenters stated that clinicians with moral or religious beliefs concerning certain procedures would be faced with having to violate those beliefs if gender dysphoria not resulting from physical impairment was a protected disability under section 504.

Response: As a threshold matter, the Department handles allegations of disability discrimination on a case-by-case basis and cannot opine on particular factual scenarios. The Department recognizes that clinicians may hold moral or religious beliefs about certain procedures that are used as treatments for gender dysphoria not resulting from physical impairments. In addition to enforcing section 504, the Office for Civil Rights also enforces conscience and religious freedom laws that may protect such clinicians and other health care workers in such situations.[24]

Comments: Multiple commenters stated that excluding gender dysphoria not resulting from physical impairments from coverage as a disability would significantly restrict discrimination protections for individuals who identify as transgender; would result in people with gender dysphoria being turned away from basic services; and would result in bias, prejudice, and mistreatment. They argue that these impacts would result in additional poor health outcomes for individuals who identify as transgender, such as depression, anxiety, and suicide. Commenters also allege that this rulemaking is based on an effort to harm individuals who identify as transgender for the express reason of political gain rather than the best reading of the statute or relevant scientific evidence.

Response: This final rule is not based on an effort to harm a population for political gain. The rule reaffirms certain statutory exclusions from the definitions of ''disability'' and ''individual with a disability.'' As the proposed rule explained, this is the best reading of the statute, informed, in part, by the relevant medical diagnostic history of the term ''gender identity disorders'' in the DSM–III–R, which was in effect at the time Congress enacted the statutory exclusions.[25]

To the extent applicable, individuals with gender dysphoria continue to be covered by Federal nondiscrimination laws that protect them from discrimination based on their race, color, and national origin,[26] biological sex,[27] age,[28] and disability.[29] This rule clarifies that individuals do not have a basis in section 504 to claim that gender dysphoria amounts to a physical or mental impairment that substantially limits one or more major life activities and entitles them to the disability rights protections of section 504.

Comments: Many commenters asserted that this proposed rule ignores scientific and medical consensus and the perceived need for sex-rejecting procedures for individuals with gender dysphoria. These commenters note that there has been a shift in medical understanding that recognizes the need to treat the distress caused by association with the other gender, rather than a need to treat the association with the other gender itself.

These commenters claim that the proposed rule disregards scientific psychiatric consensus that gender dysphoria not resulting from physical impairment is a recognized disorder that is separate from gender identity disorder. They said that gender dysphoria not resulting from physical impairment is a well-researched medical condition that can cause clinically significant distress or impairment, and that the medical consensus, including that from the American Psychiatric Association, is that such gender dysphoria should be treated through their preferred methods.[30] They note that the DSM–5 no longer includes the term ''gender identity disorder,'' but instead uses the term ''gender dysphoria.'' They also note that if gender dysphoria not resulting from physical impairments is not considered a medical condition or disability under section 504, there may be significant effects on insurance coverage, potentially limiting access to certain treatments or procedures due to out-of-pocket cost.

Response: It is beyond the scope of this final rule to regulate treatment methods or clinical standards of care for gender dysphoria not resulting from physical impairments. The scope of this rule is the best reading of the statutory exclusions from the terms ''disability'' and ''individual with a disability,'' including that ''gender dysphoria not resulting from physical impairments'' is included within the exclusion for ''gender identity disorders not resulting from physical impairments.'' The best reading of the statute is informed, in part, by the relevant medical diagnostic history of the term ''gender identity disorders'' in the DSM–III–R, which was in effect at the time Congress enacted the statutory exclusions using this term.[31] The proposed rule identified the following gender identity disorders in the third edition of the DSM that were associated with symptoms such as anxiety and depression.[32]

- ''Gender Identity Disorder of Childhood'' was marked by ''persistent and intense distress in a child about his or her assigned sex and the desire to be, or insistence that he or she is, of the other sex.'' [33]
- ''Transsexualism''—An ''essential feature[ ]'' of ''transsexualism'' included ''a persistent discomfort and sense of inappropriateness about one's assigned sex in a person who has reached puberty.'' [34]
- ''Gender Identify Disorder of Adolescence or Adulthood, Nontranssexual Type'' included ''a persistent or recurrent discomfort and sense of inappropriateness about one's assigned sex[.]'' [35]
- ''Gender Identity Disorder Not Otherwise Specified'' served as a catch-all for ''[d]isorders in gender identity that are not classifiable as a specific Gender Identity Disorder.'' [36]

The Department stands by its position in the proposed rule that, while later editions of the DSM may be relevant in some circumstances, evolving medical classifications of gender disorders cannot change the meaning of the statutory language.[37]

[24] *See e.g.,* Church Amendments (42 U.S.C. 300a–7, *et seq.*); Coats-Snowe Amendment (42 U.S.C. 238n).

[25] 90 FR at 59479.

[26] *See e.g.,* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

[27] *See e.g.,* Title IX of the Education Amendments of 1972 (20 U.S.C. 1681).

[28] *See e.g.,* The Age Discrimination Act of 1975 (42 U.S.C. 6101).

[29] *See e.g.,* Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

[30] *See* American Psychiatric Association, What is Gender Dysphoria?, *https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria* (last visited August 4, 2026); American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 452–53 (5th ed. 2013).

[31] *See Niz-Chavez* v. *Garland,* 593 U.S. 155, 160 (2021) (''When called on to resolve a dispute over a statute's meaning, this Court normally seeks to afford the law's terms their ordinary meaning at the time Congress adopted them.'').

[32] 90 FR at 59479.

[33] 90 FR at 59479 (DSM citations omitted).

[34] *Id.* (DSM citations omitted).

[35] *Id.* (DSM citations omitted).

[36] *Id.* (DSM citations omitted).

[37] 90 FR at 59482. *Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369, 400 (2024) (''[E]very statute's meaning is fixed at the time of

Continued

Comments: Many commenters asserted that rather than limiting confusion, as the Department intends, this rulemaking will cause additional confusion. Commenters contend that the confusion stems from multiple factors:

- The Department's position in this final rule is at odds with a ruling from the Fourth Circuit, the only circuit court to rule on the merits of whether gender dysphoria may be a disability under section 504 and the ADA; [38]
- The Department appears to be reversing its position from 2024, which commenters said had reflected the Department's acknowledgement that gender dysphoria not caused by a physical impairment could satisfy the elements of the definition of a disability in certain circumstances;
- Insufficient caselaw exists to justify the shift in legal conclusion; and
- Many recipients may refer to the three-prong disability test at 45 CFR 84.4(a)(1), rather than a statutory exclusion, to determine whether gender dysphoria amounts to a disability.

Response: The Department addressed the Fourth Circuit decision in the proposed rule and acknowledges that *Williams* is binding precedent within federal courts in Maryland, North Carolina, South Carolina, Virginia, and West Virginia.[39] The Fourth Circuit decision in *Williams* applies only to the Fourth Circuit and it diverges with the rulings of numerous other courts.[40] Additionally, the court in Williams noted that gender dysphoria amounts to a subset of gender identity disorders.[41] As the Department maintains throughout this rulemaking, because gender dysphoria amounts to a subset of gender identity disorders, statutory exclusions for gender identity disorders not resulting from physical impairments necessarily apply to gender dysphoria not resulting from physical impairments.

The Department accordingly disagrees that this rule will cause confusion. Because of the ambiguity introduced by the preamble discussion in the 2024 Final Rule, the Department is concerned that individuals and recipients may be under the misconception that individuals are entitled to disability protections under section 504 based on gender dysphoria not resulting from physical impairments. This rulemaking clarifies that ambiguity and follows the Department's 2025 Notice that stated that the regulatory text of the 2024 Final Rule ''does not say that gender dysphoria is a disability'' and that the preamble language ''does not have the force and effect of law'' and ''cannot be enforced.'' [42] This rulemaking will help recipients and individuals understand the correct interpretation of the law through amended regulatory text rather than the prior, misleading preamble language. The Department is confident that those determining whether a condition is appropriate as the basis for a disability under 84.4 will consider all applicable paragraphs within that section, including the three-prong test at 84.4(a)(1) and the exclusion at paragraph (g) of 84.4.

Comments: Some commenters were concerned about the requirement that the term disability under section 504 only excludes gender identity disorder or gender dysphoria that does not result from physical impairments. They stated that this requirement will require clinicians to make medical determinations as to whether the disorder results from a physical impairment or not without clear guidelines from the Department on how to make that determination. They also stated that the distinction between whether gender dysphoria results from a physical impairment or not is arbitrary and should not determine whether it is a disability under section 504.

Response: The requirement that gender identity disorders must not result from physical impairments in order to be excluded under 42 U.S.C. 12211(b)(1) has existed since 1990 when it was written into the statute by Congress with the enactment of the ADA. The Department has not been made aware of any recent instances in which a clinician has been unable to determine whether a gender identity disorder (including gender dysphoria) has been the result of a physical impairment. The distinction is not arbitrary. The distinction meaningfully lies in the causation of the gender identity disorder as set forth in the statutory text. The Department does not have authority to circumvent the language of the statute and did not have such authority at the time of the preamble to the 2024 Final Rule that created confusion.

Comments: Several commenters said that HHS does not have the authority to pick and choose what conditions will be covered as a disability under insurance plans. They stated that the Federal government cannot rewrite medical consensus, nor can it eliminate a valid medical diagnosis.

Response: The Department agrees that it cannot pick and choose which conditions may be covered as a disability under insurance plans or may amount to disabilities under Federal civil rights laws when excluded disorders are included in statutory language. The Department's obligation is to faithfully apply statutory language to its regulations and enforcement activities, not to attempt to alter statutory language based on recent changes to medical classification of a specific disorder.

Comments: Many commenters alleged that this rulemaking is not being undertaken for the Department's stated reasons. Rather, those commenters alleged that the Department wants to implement ideological agendas and limit civil rights protections for individuals who identify as transgender regardless of a statutory basis or caselaw. They point to the statements of the Secretary of the Department and other HHS officials [43] to contend that the reasons for this rulemaking are ideological only, tied to the Administration's advancement of its policy position that Federal law should only recognize an individual's sex and that individuals who identify as transgender should be denied civil rights protections. Commenters' observations and concerns are also described in this final rule's description of comments received on ''General Administrative Procedure'' matters.

Response: As the Department has stated, this rulemaking advances the best interpretation of the statutory exclusion to the terms ''disability'' and ''individual with a disability'' as these terms are defined in statute for purposes

enactment.'') (quoting *Wisconsin Central Ltd.* v. *United States,* 585 U.S. 274, 284 (2018) (emphasis deleted)).

[38] *See Williams* v. *Kincaid,* 45 F.4th 759 (4th Cir. 2022), *cert. denied,* 143 S.Ct. 2414 (2023).

[39] 90 FR at 59479–80 (discussing *Williams* v. *Kincaid,* 45 F.4th 759 (4th Cir. 2022), *cert. denied,* 143 S.Ct. 2414 (2023)).

[40] *See Duncan* v. *Jack Henry & Assocs., Inc.,* 617 F. Supp. 3d 1011, 1055–57 (W.D. Mo. 2022); *Lange* v. *Houston Cnty.,* 608 F. Supp. 3d 1340, 1361–63 (M.D. Ga. 2022); *Doe* v. *Northrop Grumman Sys. Corp.,* 418 F. Supp. 3d 921, 930 (N.D. Ala. 2019); *Parker* v. *Strawser Constr. Inc.,* 307 F. Supp. 3d 744, 754–55 (S.D. Ohio 2018); *Gulley-Fernandez* v. *Wis. Dep't of Corr.,* No. 15–CV–995, 2015 WL 7777997, at *3 (E.D. Wis. Dec. 1, 2015); *but see Guthrie* v. *Noel,* No. 1:20–CV–02351, 2023 WL 8115928, at *10–13 (M.D. Pa. Sept. 11, 2023); *Kozak* v. *CSX Transportation, Inc.,* No. 20–CV–184S, 2023 WL 4906148, at *4–7 (W.D.N.Y. Aug. 1, 2023); *Doe* v. *Mass. Dep't of Corr.,* No. 17–12255–RGS, 2018 WL 2994403, at *6–7 (D. Mass. Jun. 14, 2018); *Blatt* v. *Cabela's Retail, Inc.,* No. 5:14–cv–04822, 2017 WL 2178123, at *3–4 (E.D. Pa. May 18, 2017).

[41] *See Williams,* 45 F.4th at 768 ('''gender dysphoria' is 'a disability suffered by many (but certainly not all) transgender people.' . . . But '[f]or a subset of transgender people . . . the incongruence results in gender dysphoria—*i.e.,* a feeling of stress and discomfort with one's assigned sex.'''

[42] 90 FR at 15412.

[43] *See e.g.,* U.S. Dep't of Health & Human Servs. You Tube Account, @HHS, Protecting Children (Dec. 18, 2025) *https://www.youtube.com/watch?v=aY1XfN6Tt0Q* (last visited Sept. 1, 2026) (recording press conference).

of section 504 by including the term ''gender dysphoria'' within the term ''gender identity disorder.'' The best understanding of the statute, as written, is not an ideological agenda or policy choice, but rather a mandate of the Supreme Court's interpretation of federal statutes.[44]

Comments on the Department's Authority for This Rulemaking

Comments: Many commenters stated that the Department is well within its authority to undertake rulemaking on this topic, mainly because the preamble to the 2024 Final Rule incorrectly suggested that gender dysphoria may be a disability under section 504. Those commenters expressed their belief that section 504 excludes gender dysphoria, gender identity disorders, and transsexualism from the definition of disability. Some commenters reasoned that the preamble language addressing gender dysphoria related to the 2024 Final Rule was an overstep by the Department, stating that the Department expanded on its delegated statutory authority rather than letting courts decide whether gender dysphoria could be a disability under section 504. Finally, some commenters asserted that this rulemaking correctly interprets the statutory text of 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1), which reflects the intent of Congress, to exclude gender dysphoria not resulting from physical impairments from the definition of disability under section 504.

Response: The Department agrees that this rulemaking is necessary to eliminate the confusion caused by the preamble language in the 2024 Final Rule that introduced ambiguity on whether gender dysphoria not resulting from physical impairments may amount to a disability. As discussed throughout the preamble of this final rule, the Department has set forth its reasoning that gender dysphoria is encompassed by the statutory exclusion of gender identity disorders not resulting from physical impairments at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1).

Comments: Many commenters expressed that the current rulemaking oversteps the Department's authority by undermining the intent of Congress as expressed through statutory text. By adding language not explicitly included in the statute deciding that gender dysphoria not resulting from physical impairments falls within the exclusion, the commenters argue that the Department is undermining Congress' authority to shape section 504 in a manner not intended by Congress. Commenters also point to the 2008 ADAAA[45] passed by Congress to explain why this final rule is in conflict with the statutory authority for section 504. They note that the 2008 ADAAA stated that the definition of disability should be interpreted broadly and not require extensive analysis.[46] They also state that the term gender dysphoria was widely used within the medical community when the 2008 ADAAA was passed and Congress consciously chose not to update the statutory exclusion language at 29 U.S.C. 705(20)(F) or 42 U.S.C. 12211(b)(1). They argue that this was a signal of Congressional intent that gender dysphoria should not be excluded from the definition of disability under the ADA or section 504. They believe that the Executive Branch is picking and choosing which conditions should be covered by section 504, regardless of actual statutory language and Congressional intent.

Response: The Department appreciate these commenters' views but respectfully disagree with their conclusions. The Department agrees that the best method to interpret the intent of Congress is through the statutory text as it was understood at the time that the text was adopted.[47] While reasonable individuals may disagree over changes to the characterization of medical conditions or other circumstances over time, the statutory text of the law remains unchanged until it is formally changed by Congress. Here, the Department intends to respect the intent of Congress by clarifying in the regulations that existing statutory language referring to gender identity disorders not resulting from physical impairments includes gender dysphoria not resulting from physical impairments, consistent with the understanding of gender identity disorders at the time that Congress adopted the statutory exclusion through the ADA's enactment. The alternative, advancing the opinion that gender dysphoria not resulting from physical impairments might amount to a disability when gender identity disorders are clearly excluded by 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1), would not be the best reading of statutory text and Congressional intent.

As noted, in 2008 Congress passed the ADAAA in an effort to ensure that the ADA was interpreted consistently with the intent of Congress as it was passed in 1990.[48] The ADAAA was silent on the exclusions at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1). In the absence of any statutory language suggesting that Congress intended to alter the excluded disorders listed at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1), the Department cannot rationalize any such changes. Additionally, Congress' decision not to update 29 U.S.C. 705(20)(F) or 42 U.S.C. 12211(b)(1) with additional disorders or change existing disorders does not suggest that Congress intended to keep gender dysphoria not resulting from physical impairments off the list of exclusions. Congress did not change 29 U.S.C. 705(20)(F) or 42 U.S.C. 12211(b)(1), signaling only that it did not intend to update those exclusions.

Comments: Many commenters stated that the regulatory language the Department intends to add to this rulemaking is not the best reading of the statute. They reason that altering statutory language should be undertaken by Congress and that the Department oversteps its authority under the ruling in *Loper Bright*[49] when it attempts to alter statutory text. They also argue that at the time that the statutory exclusions were published, gender identity disorders and gender dysphoria were understood to be two separate conditions. They contend that the excluded conditions in the statute from 1990 were considered morally harmful, dangerous, or illegal at the time, and assert that now it is more commonly understood that gender dysphoria does not fall within such categories.

Response: Whether gender identity disorders or gender dysphoria (when not resulting from physical impairments) are or were considered morally harmful, dangerous, or illegal, has no bearing on interpreting 29 U.S.C. 705(20)(F) or 42 U.S.C. 12211(b)(1). Nothing in section 504 indicates that the excluded conditions are listed because they are ''morally harmful, dangerous, or illegal.'' Additionally, the Department is not persuaded that in 1990, when the ADA was enacted, gender identity disorders and gender dysphoria were both broadly accepted terms with different definitions within the medical community. The DSM–III–R, the chief diagnostic manual for

[44] *Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369 (2024).

[45] Public Law 110–325, sec. 8, 122 Stat. 3553 (2008).

[46] 122 Stat. at 3554–55.

[47] As emphasized in *Loper Bright,* ''[t]hat is the whole point of having written statutes; 'every statute's' meaning is fixed at the time of enactment.' '' *Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369, 400 (2024) (citation omitted).

[48] 122 Stat. at 3553.

[49] *Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369 (2024).

mental disorders in 1990, did not mention the term gender dysphoria. It was not until the publication of the DSM–5 in 2013 that the American Psychiatric Association (the publisher of the DSM–5) introduced the term gender dysphoria as a replacement for gender identity disorders.[50] The American Psychiatric Association's introduction of the any new term does not change the meaning of Congress' statute and the Department does not have the authority to circumvent the statutory language based on a later change by the American Psychiatric Association.

Concerning the language added by this rule, the Department does not intend to overstep the statutory text as written by Congress. Instead, the regulatory amendments at 84.4(g) clarify how gender dysphoria not resulting from physical impairments falls within an existing statutory exclusion.

In the 2024 Final Rule, the Department's preamble language created an ambiguity when it suggested that the definition of disability included a disorder excluded by Congress. This rulemaking intends to rectify that ambiguity. As stated in *Loper Bright,* ''even if some judges might (or might not) consider the statute ambiguous, there is a best reading all the same—'the reading the court would have reached' if no agency were involved.'' [51] The Department's process of statutory interpretation here sets forth this best reading.

Comments on the Interaction of the Rule With Other Laws and Legal Principles

Comments: Some commenters expressed their opinion that the preamble regarding gender dysphoria to the 2024 Final Rule violated the major questions doctrine because the Department did not have a clear mandate from Congress to conduct rulemaking on the definition of disability. Those commenters stated that the Department overstepped its authority when it said that gender dysphoria could amount to a disability under certain circumstances in the 2024 Final Rule preamble, and that this rulemaking corrects that mistake by returning to the prior understanding of the definition of disability.

Response: The Department has regulatory authority to adopt a definition of disability that reflects the best reading of section 504 as updated by the ADA and the ADAAA. The Department does not have the authority to expand that statutory definition or narrow a statutory exclusion. Through this rulemaking, the Department intends to eliminate any confusion caused by the 2024 Rule preamble language regarding whether gender dysphoria may be a disability under section 504.

Comments: Many commenters asserted that this rulemaking and the premise that gender dysphoria cannot be considered a disability under section 504 contradict state laws finding the opposite. Some states have their own nondiscrimination laws that extend protections to people with gender dysphoria based on disability status, and these commenters believe that this rulemaking undermines those laws.

Response: The Department's responsibility is to establish section 504 regulations consistent with the Federal statute. The fact that state law may be inconsistent with Federal regulations is irrelevant. Where there is a direct conflict, section 504 and similar Federal nondiscrimination laws will usually preempt conflicting state laws.[52] However, States may impose their own laws,[53] provided the State law does not serve as an obstacle to or frustrate the purpose of Federal law.[54] States cannot dictate the requirements or exclusions of Federal law or regulation.

Comments: Many commenters expressed their belief that this rulemaking violates the Equal Protection Clause of the 14th Amendment of the United States Constitution. They state that the Department has determined, based on animus, that it does not want to extend disability protections to individuals who identify as transgender, and rewrote statutory exclusions to accomplish said goal.

Response: HHS disagrees with comments that the rule violates the Equal Protection Clause of the 14th Amendment of the United States Constitution and rejects the contention that the Department is acting based on animus. Existing statutory language does not prohibit any individual from appropriately invoking the protection of section 504, it only prohibits certain disorders from being considered disabilities under the statute and certain individuals with those disorders from the definition of individuals with disabilities. This rulemaking corrects a previous misinterpretation of statutory language that was set out in the 2024 Final Rule preamble.

Comments: Some commenters expressed concern that recipients covered by section 504 also include health programs and activities covered by section 1557 of the Affordable Care Act (ACA) [55] and public entities covered by ADA title II,[56] and that the exclusions from the section 504 definition of disability would put the definition of disability at odds with the definition of disability within section 1557 of the ACA and title II of the ADA. These commenters also assert a concern that a person with gender dysphoria could be considered an individual with a disability under title II of the ADA or section 1557 of the ADA but would not be considered a person with a disability under section 504.

Response: The changes to the text in this rulemaking do not run counter to the text and requirements of section 1557 of the ACA or title II of the ADA. The only discussion in a rule of whether gender dysphoria not resulting from physical impairments may be considered a disability in prior Federal disability rights regulations occurs in the preamble of the 2024 Final Rule.

Comments on Administrative Procedure

Comments: Some commenters agreed with the Department's decision to use a notice of proposed rulemaking (NPRM) that solicited public comments to correct what they consider to be the overreach of the preamble language to the 2024 Final Rule. They noted that this format of rulemaking allows the public to weigh in on the rulemaking and the Department to consider all comments when deciding on a final rule.

Response: While the Department pursued notice and comment rulemaking for this regulatory amendment, the Department does have the authority, under 5 U.S.C. 553(a)(2), to promulgate rules under section 504 without notice and comment because section 504 governs recipients of Federal financial assistance, all types of which fall into one or more of the exceptions in section 553(a)(2).

Comments: Many commenters disapproved of the Department using a comment period of 30 days for the rulemaking. They believed that due to the importance of the rulemaking and the fact that the comment period overlapped with December and January holidays, a time period of 60 days should be used.

[50] *See* Am. Psychiatric Ass'n, *Gender Dysphoria* (2013), *https://www.psychiatry.org/file%20library/psychiatrists/practice/dsm/apa_dsm-5-gender-dysphoria.pdf.*

[51] *Loper Bright Enterprises,* 603 U.S. at 399 (citations omitted).

[52] U.S. Const. art. VI, cl. 2.

[53] *See* 42 U.S.C. 12201(b).

[54] *See St. Louis Effort for AIDS* v. *Huff,* 782 F.3d 1016, 1021, 1024 (8th Cir. 2015) (partially affirming lower court preliminary injunction because Missouri law ''frustrates Congress' purpose'' and ''pose[s] an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'').

[55] 42 U.S.C. 18116.

[56] 42 U.S.C. 12132.

Response: While a 60-day comment period is not required for this rulemaking, the Department decided to extend the comment due date from January 20, 2026 to February 20, 2026, in part to give the public a longer opportunity to comment on the rulemaking.[57]

Comments: Many commenters argued that the rulemaking violates the Administrative Procedure Act (APA)[58] because it is allegedly arbitrary and capricious; that is, the rulemaking is based on misinformation, assumptions, and animus rather than the Department's stated goals of clarifying confusion and returning to the plain statutory language. In support of these assertions, the commenters point to public statements, which are described in the ''general comments'' section of this final rule, made by Department Secretary Robert F. Kennedy Jr. and then Deputy Secretary Jim O'Neil at a press conference that announced this and two other rulemakings that dealt broadly with gender identity.[59] Commenters claimed that the statements from these two Department leaders, which included assertions that there are only two sexes, assertions that the public figures invoked religion to support their views on these matters, and associated the proposed rule with other rulemakings released on the same day, prove that the Department is not motivated by clearing up confusion, statutory text, or the correct legal interpretation.

Response: The Department is pursuing this rulemaking in an effort to better align its interpretation of the definition of disability with the statutory language at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1). Numerous Federal courts[60] have signaled interpretations of the law similar to the Department's current position that gender dysphoria not resulting from a physical impairment is excluded from the definition of disability because it constitutes a gender identity disorder not resulting from physical impairments. The Department is pursuing this rulemaking to rectify confusion caused by language in the preamble to the 2024 Final Rule. On December 18, 2025, the Secretary of HHS and the former Deputy Secretary delivered remarks on three rulemakings being pursued by the Department that dealt broadly with gender identity.[61] The two rulemakings published by the Centers for Medicare & Medicaid Services (CMS) do not impact this rulemaking. Regardless of the general views expressed by the Secretary and the former Deputy Secretary at that event, this rulemaking is being pursued for the express reasons given here and in the preamble to the proposed rule and not any other alleged basis.

Comments: Many commenters stated that the Department has failed to provide sufficient scientific and/or medical evidence to support its claim that gender dysphoria should not be considered a disability under section 504. Those commenters stated that the Department's conclusion, that gender dysphoria today is sufficiently similar to gender identity disorders as defined in 1990, is not supported by scientific studies. They also argue that the Department improperly ignores the differences in the versions of the DSM. Some commenters also argued that the Department is violating Executive Order 13563, asserting that this rulemaking is not based off of the best available science and does not result in a beneficial cost-to-benefit ratio.

Response: This rulemaking considers the appropriate evidence that applies to the definition of gender identity disorders as Congress would have considered it in 1990 when it excluded, from the statutory definition of disability, gender identity disorders not resulting from physical impairments. The Department must consider the definitions and plain meanings in place at the time of passage.[62] In 1990, the DSM–III–R was the most contemporary medical literature defining gender identity disorders. The Department considered how the current definition of gender dysphoria, as defined by contemporary medical literature—the DSM–5—compares to the definition of gender identity disorders in 1990. Scientific and medical advancements following 1990 are only considered to the extent that the current diagnosis of gender dysphoria fits into the definition of gender identity disorders from 1990. This is because regulations must be grounded in the underlying statutory text and the meaning of that text cannot evolve without Congressional action. The Department will align with the legislative intent of Congress, as evidenced by statutory text.

Comments: Many commenters objected to the Department's position that the 2024 Final Rule preamble language on gender dysphoria increased confusion concerning whether gender dysphoria could be considered a disability. They argued that the 2024 Final Rule preamble simply restated caselaw and came to the same conclusion that the Fourth Circuit, the only circuit court to consider the issue on the merits, came to—that gender dysphoria could be a disability in appropriate circumstances.[63] They also argue that the Department has not cited evidence that recipients are confused about the definition of disability. For example, commenters asserted that the Department did not allege, or cite, any complaints or compliance reviews it has received or conducted where an individual has alleged disability discrimination based on gender dysphoria and a covered entity has indicated it is unsure whether gender dysphoria is a disability.

Response: Whether the Department has received complaints or conducted compliance reviews concerning whether section 504 applies to individuals with gender dysphoria is not dispositive of whether there is confusion among the public as a result of the 2024 Final Rule preamble. For example, during this rulemaking, the Department received many comments in support of the rulemaking, many of which agree with the Department's position that there is extensive confusion among covered entities over what is covered by section 504 and whether gender dysphoria not resulting from a physical impairment constitutes a disability. Additionally, state Attorneys General sued the Department over the preamble language at issue, arguing that it goes beyond what is required by the underlying statute and burdens recipients.[64]

While the 2024 Final Rule preamble restated the Fourth Circuit opinion in *Williams* v. *Kincaid,* it went further by claiming that section 504 permitted the consideration of gender dysphoria not resulting from physical impairments, as a disability. This conclusion did not adequately incorporate the rulings of other courts or consider the plain meaning of the pertinent statutes.

[57] 91 FR 4467 (Feb. 2, 2026).

[58] 5 U.S.C. 551–559.

[59] *Supra* note 42.

[60] *See Duncan* v. *Jack Henry & Assocs., Inc.,* 617 F. Supp. 3d 1011, 1055–57 (W.D. Mo. 2022); *Lange* v. *Houston Cnty.,* 608 F. Supp. 3d 1340, 1361–63 (M.D. Ga. 2022); *Doe* v. *Northrop Grumman Sys. Corp.,* 418 F. Supp. 3d 921, 930 (N.D. Ala. 2019); *Parker* v. *Strawser Constr. Inc.,* 307 F. Supp. 3d 744, 754–55 (S.D. Ohio 2018); *Gulley-Fernandez* v. *Wis. Dep't of Corr.,* No. 15–CV–995, 2015 WL 7777997, at *3 (E.D. Wis. Dec. 1, 2015).

[61] *See* Full Replay—HHS Makes an Announcement to Protect Children—12/18/25 (Dec. 18, 2025), *https://www.youtube.com/watch?v=VQ0XD5FskKI.*

[62] *Niz-Chavez* v. *Garland,* 593 U.S. 155, 160 (2021) (''When called on to resolve a dispute over a statute's meaning, this Court normally seeks to afford the law's terms their ordinary meaning at the time Congress adopted them.'')

[63] *Williams* v. *Kincaid,* 45 F.4th 759 (4th Cir. 2022), *cert. denied,* 143 S.Ct. 2414 (2023).

[64] *See Texas* v. *Kennedy,* No. 5:24–cv–00225 (N.D. Tex.).

Comments: One commenter alleged that this rulemaking violated the APA by not offering an adequate explanation for its departure from the reasoning in the 2024 Final Rule, ignoring reliance interests of recipients already implementing the 2024 Final Rule, failing to consider the discriminatory effects of the proposed rule's regulatory codification that categorically excludes gender dysphoria not resulting from physical impairments from the definition of disability, failing to consider reasonable alternatives such as individualized assessments, and adopting an expansive reading of a narrow statutory exclusion without justification.

Response: The Department's 2025 Notice has laid out a clear explanation for why the preamble language in the 2024 Final Rule created an ambiguity. The 2025 Notice reminded regulated entities that the 2024 Final Rule ''does not say that gender dysphoria is a disability'' and that language in the preamble to that Final Rule ''does not have the force or effect of law'' and ''cannot be enforced.'' [65] Accordingly, the 2024 preamble does not support the alleged reliance interest or other allegations.

In the proposed rule, the Department identified how it examined the meaning of the statutory language at the time the ADA was passed in 1990 by considering how the DSM defined gender identify disorders and how that aligns with the understanding of gender dysphoria. Through this process, the Department determined the best meaning of the statutory exclusion.

Gender identity disorders not resulting from physical impairments, as defined by the DSM–III–R, include gender dysphoria not resulting from physical impairments. The essential feature of gender identity disorders in the DSM–III–R is an incongruence between assigned sex and gender identity.[66] The essential features of gender dysphoria in the DSM–5 are marked incongruence between experienced or expressed gender and assigned gender, of at least six months' duration along with associated clinically significant distress.[67] This means that a person with gender dysphoria not resulting from physical impairments today would be considered to have a gender identity disorder not resulting from physical impairments as contemplated in 1990 and be subject to the exclusions from section 504.

The Department discusses reliance interests under the subheading ''comments on reliance interests,'' but notes that given the non-binding nature of preamble language generally [68] and the 2025 Notice, no person has sufficient reason to change their behavior or expectations based on the preamble language of the 2024 Final Rule.

Because the Department is bound by statutory text and the best reading of the statute, commenters that raise concerns about discriminatory effects of the statutory language would need to take those concerns to Congress. Concerning individualized assessments, this rulemaking considers such assessments to the extent they are permitted by statutory text. Finally, the Department objects to any suggestion that its reading of 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) is ''expansive.'' The plain language supports the Department's interpretation that gender dysphoria not resulting from physical impairments falls within the exclusion of gender identity disorders not resulting from physical impairments.

Comments: While some commenters expressed their approval of the new language that the Department added to the definition of disability to clarify that gender dysphoria not resulting from physical impairments is part of the exclusion under section 504, many commenters objected to the new language. They stated that the Department is undermining statutory language and adding language that Congress did not write or intend. Accordingly, they argue that the Department is overstepping its authority.

Response: The Department agrees with the commenters that the language this rulemaking adds to the regulatory text of section 504 is the best interpretation of the underlying statutes. The text that the Department is adding, which clarifies that gender dysphoria not resulting from a physical impairment is excluded from the definition of disability, is the logical interpretation of the statute that takes into account the diagnosis of gender identity disorders from 1990, when the statute was enacted. The Department disagrees with commenters who state that this rule adds language that Congress did not write or intend, as regulatory text that correctly interprets a statute does not have to repeat the statute verbatim. The proposed language is in line with Congressional intent from 1990 when the ADA was passed.

Comments on Regulatory History and Caselaw

Comments: Some commenters expressed their belief that this rulemaking is justified by the underlying statute as well as by existing caselaw. Some commenters pointed to Federal district court decisions that came to the conclusion advanced by this rulemaking—that gender dysphoria not caused by a physical impairment is encompassed by gender identity disorders not caused by a physical impairment and is correctly excluded from the term disability under section 504. They also note that when the Supreme Court denied a petition for writ of certiorari for *Williams,* two Justices dissented and voiced their opinion that gender dysphoria not caused by a physical impairment would likely be excluded from the definition of disability.[69]

Response: The Department generally agrees with the commenters. As the Department has continuously stated, it is bound by the existing statutory language and cannot undertake rulemaking that expressly contradicts that language. To that effect, suggesting that a disorder clearly excluded from the definition of disability in 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) could amount to a disability is beyond the Department's authority. The Department also notes that, under existing caselaw, a number of courts have expressed support of the interpretation the Department advances in this rulemaking, while other courts have come to the opposite conclusion.[70] In order to avoid overstepping its authority, the Department adopts regulatory language that adheres to the underlying statutory text.

Comments: Many commenters stated that they disagree with the conclusions of the Department and do not believe that the existing caselaw supports this

[65] *See* 90 FR at 15412.

[66] *See* DSM–III–R at p. 261.

[67] *See* DSM–5 at p. 452.

[68] *See Kisor* v. *Wilkie,* 588 U.S. 558, 621 (2019) (Gorsuch, J., concurring) (''[t]he text of the regulation *is* treated as the law, and the agency's policy judgment has the force of law *only* insofar as it is embodied in the regulatory text.'').

[69] *Kincaid,* 143 S. Ct. at 2417 (Alito, J. dissenting from denial of certiorari).

[70] *See Duncan* v. *Jack Henry & Assocs., Inc.,* 617 F. Supp. 3d 1011, 1055–57 (W.D. Mo. 2022); *Lange* v. *Houston Cnty.,* 608 F. Supp. 3d 1340, 1361–63 (M.D. Ga. 2022); *Doe* v. *Northrop Grumman Sys. Corp.,* 418 F. Supp. 3d 921, 930 (N.D. Ala. 2019); *Parker* v. *Strawser Constr. Inc.,* 307 F. Supp. 3d 744, 754–55 (S.D. Ohio 2018); *Gulley-Fernandez* v. *Wis. Dep't of Corr.,* No. 15–CV–995, 2015 WL 7777997, at *3 (E.D. Wis. Dec. 1, 2015); *but see Guthrie* v. *Noel,* No. 1:20–CV–02351, 2023 WL 8115928, at *10–13 (M.D. Pa. Sept. 11, 2023); *Kozak* v. *CSX Transportation, Inc.,* No. 20–CV–184S, 2023 WL 4906148, at *4–7 (W.D.N.Y. Aug. 1, 2023); *Doe* v. *Mass. Dep't of Corr.,* No. 17–12255–RGS, 2018 WL 2994403, at *6–7 (D. Mass. Jun. 14, 2018); *Blatt* v. *Cabela's Retail, Inc.,* No. 5:14–cv–04822, 2017 WL 2178123, at *3–4 (E.D. Pa. May 18, 2017).

rulemaking. Some of those commenters stated that the Department should only conduct rulemaking changing interpretation on this issue if the highest court to consider the interpretation, such as a circuit court or the Supreme Court, has come to the opposite conclusion. Some commenters stated that the Department should only conduct further rulemaking if the Supreme Court overturns the finding in the Fourth Circuit.

Response: The Department has an obligation to enforce the laws over which it has jurisdiction consistent with the best reading of their statutory text. The preamble to the 2024 Final Rule created ambiguity over whether gender dysphoria not resulting from physical impairments could amount to a disability under section 504. That ambiguity must be addressed to avoid confusion among recipients. The Department will continue to interpret the law consistent with the statutory language, as understood at the time the language was enacted.

We also reiterate that the Fourth Circuit's decision in *Williams* applies only to the Fourth Circuit and advances the argument that gender dysphoria amounts to a subset of gender identity disorders.[71] Because gender dysphoria amounts to a subset of gender identity disorders, statutory exclusions for gender identity disorders not resulting from physical impairments necessarily apply to gender dysphoria not resulting from physical impairments.

Comments: Several commenters asserted that this rulemaking contravenes Congressional intent to provide maximum protection for individuals with disabilities, including the ADAAA, which expanded the definition of disability under the ADA and section 504.

Response: The ADAAA did not change the exclusions in 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1)—rather it expanded the definition of disability under the ADA and section 504 in response to Supreme Court decisions that narrowed the definition of disability in a manner not intended by Congress.[72] The ADAAA ensured that whether an individual has a disability, a record of such an impairment, or is regarded as having such an impairment, does not require extensive analysis. It did not, however, amend or limit the exceptions to the term disability under the ADA at 42 U.S.C. 12211(b)(1).

Comments: Some commenters noted that in 2024 the Attorneys General of Texas and other states filed suit against the Department alleging in part that the gender dysphoria language in the preamble to the 2024 Final Rule violates the APA.[73] Those commenters alleged that this rulemaking is being done solely in response to that lawsuit rather than to address any ambiguity or confusion. Some commenters stated that as the preamble to the 2024 Final Rule is not binding, there is no confusion or need for this rulemaking.

Response: The Department reiterates that this rulemaking is being undertaken to erase any confusion caused by the preamble to the 2024 Final Rule. The 2024 lawsuit is indicative of the confusion and legal risk posed by the preamble to the 2024 Final Rule, but it is not the main impetus for this rulemaking. The lawsuit is, in part, the result of the preamble language contained in the 2024 Final Rule that created the ambiguity regarding section 504.

Comments: Concerning the statutory language from 1990, one commenter noted that the legislative record was steeped in animus against individuals who identify as transgender, and as such, should not be followed.

Response: The Department has no authority to change the statutory language from 1990 or the Congressional legislative record. The Department cannot disregard the plain language of the statute as enacted by Congress.

Comments: One commenter stated that the Supreme Court has already decided in *Bostock* v. *Clayton Cnty,* 590 U.S. 644 (2020), that discrimination against individuals who identify as transgender, based on their gender identity, is sex discrimination and that this rulemaking runs afoul of that Supreme Court precedent.

Response: This rulemaking does not address sex discrimination, which is outside the scope of section 504 and this rulemaking.[74] This rulemaking only considers whether gender identity disorders not resulting from physical impairments fall into an explicit statutory exclusion to the term disability under section 504.

Comments on the Need for the Rule

Comments: Many commenters agreed with the Department's logic for this rulemaking—that the preamble language in the 2024 Final Rule was sufficiently unsupported and confusing as to require this rulemaking for clarification. Those commenters agreed that the statutory language at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) excluded gender dysphoria not resulting from physical impairments from the terms disability and individual with a disability under section 504 and that the best way to correct the ambiguity that the Department created in 2024 is through this rulemaking.

Response: The Department agrees with these commenters and believes that the most appropriate method to correct misinterpretation and eliminate confusion is to adopt clarifying regulatory text through the rulemaking process.

Comments: Many commenters voiced their opinion that the Department has not adequately explained the need for this rulemaking. For example, some commenters noted that the Department already issued a statement in the **Federal Register** acknowledging that the preamble to the 2024 Final Rule is not legally enforceable.[75] Those commenters reasoned that if preamble language is unenforceable, there is no need to alter regulatory language to account for that preamble language.

Response: The Department agrees that the preamble language of the 2024 Final Rule is not legally enforceable, but the confusion it has caused among recipients and members of the public necessitates this rulemaking. Individuals not well versed in Federal statutes and regulations likely do not know the difference between preamble and regulatory text. Additionally, several litigants, including some state Attorneys General, have already sued the Department as a result of the 2024 preamble language.[76] To ensure that the regulation implementing section 504 to HHS federally assisted programs reflects the correct interpretation of the law, rulemaking is necessary.

[71] *See Williams,* 45 F.4th at 768 (" 'gender dysphoria' is 'a disability suffered by many (but certainly not all) transgender people.' . . . But '[f]or a subset of transgender people . . . the incongruence results in gender dysphoria—*i.e.,* a feeling of stress and discomfort with one's assigned sex.' ").

[72] *See e.g., Sutton* v. *United Airlines, Inc.,* 527 U.S. 471 (1999) (ruling that mitigating measures must be considered when determining whether an impairment substantially limits major life activities); *see also Toyota* v. *Williams,* 534 U.S. 184 (2002) (ruling that a disability's impact must be permanent or long-term and the tasks at issue must be of central importance to most people's lives).

[73] *See Texas* v. *Kennedy,* No. 5:24–cv–00225 (N.D. Tex.); *see also Rapides Parish Sch. Bd.* v. *U.S. Dep't of Health & Hum. Servs., et al,* 1:25–cv–70 (W.D. La.) (challenging, among other claims, the 2024 Final Rule's interpretation of whether gender dysphoria may be considered a disability under section 504).

[74] The Department notes, however, that the Supreme Court's decision in *Bostock* v. *Clayton Cnty,* 590 U.S. 644 (2020), expressly limited its decision to Title VII.

[75] 90 FR 15412 (Apr. 11, 2025).

[76] *See Texas* v. *Kennedy,* No. 5:24–cv–00225 (N.D. Tex.); *Rapides Parish Sch. Bd.* v. *U.S. Dep't of Health & Hum. Servs., et al,* 1:25–cv–70 (W.D. La.).

Comments: Many commenters alleged that the Department's proffered reasons for rulemaking were pretextual and that the Department undertook this rulemaking due to bias and hate aimed at people who identify as transgender. Additionally, some commenters alleged that the only reason the Department is pursuing this rulemaking is because the current Administration wants to reinterpret the definition of disability to align with its own views. Commenters stated that this rulemaking is based solely on the policy preference of a new Administration, which commenters state is insufficient reason for rulemaking.

Response: The Department believes that individuals with gender dysphoria should be treated with dignity and respect. The Department reiterates that the preamble language in the 2024 Final Rule that suggested gender dysphoria not resulting from physical impairments could be a disability under section 504 was the result of an incorrect interpretation of the applicable statute as well as an overreliance on a single decision that applies to one judicial circuit.[77] This rulemaking is not intended to restrict or remove any civil rights protection to which individuals with gender dysphoria not resulting from physical impairments are entitled. Rather, it rectifies the ambiguity created by the preamble of the 2024 Final Rule. The Department does not intend to convey any position on the legitimacy, morality, or proper treatment of gender dysphoria not resulting from physical impairments in this rulemaking beyond clarifying its application to section 504.

Comments: Some commenters expressed their opinion that, in opposition to the Department's stated goals, this rulemaking will actually result in additional litigation, which would carry associated costs and thus diminish the justification for this rule. These commenters also believe that the reasoning given in the 2024 Final Rule preamble language, which included supporting caselaw, would be persuasive to a court of law, particularly because this rule adds regulatory text to the definition of disability not explicitly included in section 504.

Response: The Department is aware that, regardless of what position it takes, it is possible that litigation will ensue. As previously noted, the Department has already been sued for its position in the 2024 Final Rule preamble.[78] The Department does not believe that the reasoning expressed in the 2024 Final Rule preamble is sufficiently persuasive in light of statutory text and believes that the outcome of any future litigation concerning its interpretation of whether gender dysphoria not resulting from physical impairments is a disability under section 504 will favor the Department's position.

Concerning costs of litigation, the Department recognizes that any rulemaking is subject to litigation, but the uncertainty of whether such litigation will arise, how time-consuming it may be, and whether other courts rule on the same subject matter, makes quantifying the costs of any such litigation to a reasonable level of accuracy impossible.

Comments: Some commenters expressed their belief that the Department made its determination that gender dysphoria is not a disability based on a specific study[79] and called into question the logic of that study.

Response: The Department is not undertaking this rulemaking in response to the study cited by commenters because that study is not relevant to the term disability under section 504. Rather, it is undertaking this rulemaking to better align its section 504 rule with the statutory language at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1), which excludes gender identity disorders not resulting from physical impairments from the definition of disability under section 504. Based on the definition of gender identity disorders under the DSM–III–R and gender dysphoria under the DSM–5, the Department is conducting rulemaking to address the ambiguity created by the 2024 Final Rule preamble.

Comments: Some commenters noted that because of the changes made to the section 504 Final Rule regulation text at 45 CFR 84.4(g), the Department's section 504 regulation now differs from the Department of Justice's regulation implementing title II of the ADA.[80] These commenters stated that the differences in the definitions of disability in the two regulations will lead to confusion among members of the public, including recipients.

Response: The Department does not believe that this minor difference in regulatory text will lead to confusion among members of the public and recipients. This rulemaking only addresses the ambiguity introduced by the preamble to the 2024 Final Rule, the only disability discrimination regulation where gender dysphoria is considered as a potential disability. The Department of Justice also approved this rule through the Executive Order 12250 review process.

Comments: Some commenters noted that the Department's 2025 Notice has already clarified that the preamble language in the 2024 Final Rule is not enforceable. Accordingly, they argue that by the Department's own admission, there is no need for this rulemaking.

Response: While the Department agrees that the language in the 2024 Final Rule preamble is not binding and cannot impose new legal requirements on recipients, the language introduced an ambiguity warranting regulatory resolution.

Comments on the Definition of Disability

Comments: Many commenters agreed with the Department's interpretation of the definition of disability, especially the exceptions at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1). Those commenters reasoned that the statutes provide a clear restriction on the application of the term ''disability'' to gender identity disorders, and that at the time that the statute was enacted, the term ''gender identity disorder'' was understood to cover the manifestations that we today understand to be associated with gender dysphoria. The commenters also stated their beliefs that the majority of instances of gender dysphoria are not caused by physical impairments and that Congress clearly stated its intent that gender identity disorders and gender dysphoria should only be considered disabilities if they were caused by some physical impairment.

Response: The Department agrees that, in 1990, gender identity disorders were understood to include the manifestations that we, today, understand to be associated with gender dysphoria. The Department does not take any position on the frequency of instances of gender dysphoria caused by physical impairments versus those not caused by physical impairments but agrees that Congress clearly intended to differentiate between the two instances.

Comments: Some commenters stated that the definition of gender dysphoria in the DSM–5 seems to amount to a more severe version of a gender identity disorder as defined in 1990.[81] Accordingly, a diagnosis of gender

[77] *See Williams* v. *Kincaid,* 45 F.4th 759 (4th Cir. 2022), *cert. denied,* 143 S.Ct. 2414 (2023).

[78] *See Texas* v. *Kennedy,* No. 5:24–cv–00225 (N.D. Tex.); *Rapides Parish Sch. Bd.* v. *U.S. Dep't of Health & Hum. Servs., et al,* 1:25–cv–70 (W.D. La.).

[79] U.S. Dep't of Health & Human Servs., *Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices* (Nov. 19, 2025), *https://opa.hhs.gov/sites/default/files/2025-11/gender-dysphoria-report.pdf.*

[80] 28 CFR 35.108(g).

[81] *See* DSM–III–R at p. 261; see also DSM–5 at p. 452.

dysphoria today would necessarily fall within the category of gender identity disorder if the same symptoms manifested in 1990. Based on this logic, gender dysphoria falls under the umbrella of gender identity disorder and is correctly excluded from the definition of disability in this rule. To find otherwise would be to make the logical fallacy of considering a subset (gender dysphoria) to be both within and outside of a larger category (gender identity disorder) simultaneously.

Response: The Department agrees that an individual diagnosed with gender dysphoria today would necessarily meet the criteria to have been diagnosed with GID in 1990, clearly falling within the excluded category as considered by 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1). Regardless of whether contemporary diagnoses have changed to focus more on distress, the statutory requirements remain.

Comments: Some commenters expressed their belief that any distress experienced by someone with gender dysphoria or a gender identity disorder is not comparable to the distress experienced by someone with a disability as defined by section 504. The commenters go on to state that gender dysphoria, while likely caused by a ''mental illness,'' is not comparable to the debilitating impact of ''disabilities'' as statutorily defined.

Response: The Department does not take any position in this rulemaking on whether individuals with gender dysphoria experience distress comparable to the distress experienced by individuals with a disability as defined by section 504. This rulemaking only recognizes that the definition of gender dysphoria would constitute a subset of the definition of gender identity disorders and, thus, would fall within an excluded category under 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1).

Comments: Commenters stated that under the test for the definition of disability, gender dysphoria may qualify as a disability depending on the specific circumstances. Specifically, gender dysphoria is a physical or mental impairment, such as a psychological disorder, that substantially limits one or more major life activities, like thinking, communicating, or interacting with others.

Response: Regardless of whether gender dysphoria not resulting from a physical impairment satisfies the requirements at 45 CFR 84.4(a)(1), it is included as part of an explicit exclusion at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1). The disorders at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) are excluded from the terms ''disability'' and ''individual with a disability.''

Comments: Some commenters alleged that gender dysphoria fits into the narrower definition of disability considered by this rulemaking because it is generally caused by a physical impairment. Those commenters alleged that a growing body of research has found physical components related to various bodily systems, including neurological, psychiatric, and the endocrine system, of those who experience gender dysphoria.

Response: This rulemaking does not take any position on whether a specific instance of gender dysphoria results from a physical impairment. The Department recognizes that Congress intended to differentiate between gender identity disorders (including gender dysphoria) not resulting from a physical impairment and those that do result from a physical impairment, as those terms were understood in 1990 when the statutory exclusion was adopted.

Comments: Many commenters stated their belief that the definition of gender dysphoria is narrower than the definition of gender identity disorders as considered in 1990, and accordingly the exclusion of gender identity disorders should not apply to gender dysphoria. These commenters asserted that while gender identity disorders broadly included people identifying with the other gender, gender dysphoria focuses on the clinically significant distress experienced by some individuals who identify with the other gender. Accordingly, they contend that the narrower classification of gender dysphoria not resulting from physical impairments could be considered a disability under section 504. Some commenters objected to the characterization of gender dysphoria as a subset of gender identity disorders, claiming instead that the two diagnoses cannot be reasonably compared because they focus on different symptoms (clinical distress resulting from identifying with the other gender versus merely identifying with the other gender). One commenter asserted that because the diagnoses of gender identity disorder and transsexualism are not in the current DSM, they are now nonexistent and cannot be diagnosed.

Response: Under DSM–5, gender dysphoria diagnoses focus on the distress caused by an association with the other gender. Under DSM–III–R, diagnoses of gender identity disorders focused on both the association with the other sex and the resulting distress. The slight shift in focus does not change the fact that in order for an individual to experience the distress required by gender dysphoria, they must first associate with the other gender and/or sex, as required by gender identity disorders. Both disorders are characterized by the same symptoms.

As explained before, changes to current medical diagnoses, including through the current DSM–5, do not alter the definitions of disorders included in statutes by Congress. Although the current DSM does not define gender identity disorders or transsexualism, those terms were defined in the relevant DSM in 1990.

Comments: Many commenters noted that scientific progress is constantly evolving, resulting in changes to the medical definitions of certain disorders. They argued that Congress is not required to update statutory language in order to account for those changes. For example, the 2024 Final Rule updated the definition of disability to note that physical or mental impairments include long COVID.[82] Commenters also noted that there have been changes to the medical definitions of Asperger's Syndrome and Dyslexia over the years that have not resulted in the need for updated statutory language. Commenters argued that even if a person with gender dysphoria today would likely be diagnosed with gender identity disorder in 1990, the fact that the DSM changed the terms and diagnostic criteria for specific conditions should preclude them being equated.

Response: Conditions such as long COVID are considered impairments because they meet the statutory and regulatory requirements and there are no statutory exclusions, either at 29 U.S.C. 705(20)(F) or elsewhere, that would exclude them. Indeed, a physical or mental impairment that stems from an upper respiratory infection such as COVID–19, which did not exist in 1977 or 1990, that substantially limits a major life activity or major bodily function, fits the statutory definition of disability. By contrast, gender identity disorders not resulting from physical impairments are specifically excluded by the statutory language, and a characterization shift between gender identity disorders and gender dysphoria in the interim does not change the statutory exclusion.

Comments: One commenter noted that the preamble to the Department of Justice's implementing regulation for Title II of the ADA states that ''[i]t is not possible to include in the legislation a list of all the specific conditions, diseases, or infections that would constitute physical or mental

[82] *See* 45 CFR 84.4(b)(2).

impairments because of the difficulty of ensuring the comprehensiveness of such a list, particularly in light of the fact that new disorders may develop in the future.'' That commenter asserted that gender dysphoria is one such new disorder meant to be encompassed by the definition of disability.

Response: The Department is not persuaded by this reasoning. The Department continues to believe that the exclusion of gender identity disorders not resulting from physical impairments, as set out in 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1), includes and encompasses gender dysphoria not resulting from physical impairments.

Comments on the Meaning of Statutory Language

Comments: Many commenters opined that the Department's rulemaking correctly interprets the plain meaning of the statute (29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1)) to exclude individuals with gender dysphoria not resulting from physical impairments from the term individuals with a disability. They stated that in 1990, when Congress passed the ADA, the definition for gender identity disorders in the DSM–III–R was sufficiently broad as to encompass the definition of gender dysphoria in the DSM–5 in 2024. That is to say, an individual diagnosed with gender dysphoria in 2024 would have been diagnosed with a gender identity disorder in 1990. They noted that the key diagnostic criteria set out in the DSM for gender identity disorder in 1990 remain in effect today. The plain meaning of the statute in 1990 is the same as the plain meaning in 2024, irrespective of any evolution in the DSM's diagnostic standards, without additional legislation.

Response: The Department agrees with these commenters.

Comments: Some commenters expressed their belief that the existing statutory language at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) does not exclude gender dysphoria from the definition of disability and alleged that the Department's updated regulatory language goes beyond existing statutory language. As noted elsewhere, these commenters argue that the diagnostic criteria for gender dysphoria with a focus on significant distress are different than the criteria for gender identity disorders. They also noted that the language of 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) seems to identify gender identity disorders, as well as other identified disorders excluded from the definition of disability, as ''sexual behavior disorders.'' They assert that gender dysphoria not resulting from physical impairments is not a sexual behavior disorder as diagnosed using the DSM–5, and commenters argued that the term ''gender identity disorders,'' as used in the exclusions at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) likely referred to individuals that received sexual gratification from appearing as the opposite sex.

Response: The Department appreciates the position of these commenters but maintains that the statutory language at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) that excludes gender identity disorders not resulting from physical impairments encompasses or extends to gender dysphoria not resulting from physical impairments. The language that the Department adds to the regulatory definition of disability in its section 504 rules clarifies that gender dysphoria not resulting from physical impairments falls within the category of gender identity disorders contemplated by 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) and is, thus, excluded from the term disability. The additional regulatory language is not explicitly stated in the statute but is the best meaning of the statutory language. The diagnostic criteria for gender dysphoria not resulting from physical impairments aligns with the diagnostic criteria of gender identity disorders, which are excluded from the term disability. Relying on the DSM–III–R, an individual with gender dysphoria not on the basis of physical impairments meets the diagnostic criteria for gender identity disorder and, thus, would not be considered an individual with a disability. That fact cannot be changed by contemporary changes in the characteristics of certain disorders or the adoption of definitions for ''new'' disorders which can be seen as moving towards normalizing associating with the opposite sex while diagnosing the distress caused by that association.

Comments on Reliance Interests

Comment: Some commenters argued that any reliance interests based on the 2024 Final Rule preamble are unreasonable and unjustifiable since preamble language is not enforceable and the idea that gender dysphoria not resulting from physical impairments could be a disability under section 504 is contradicted by statutory exclusions.

Response: When an agency changes course, it must assess whether its previous position created reliance interests, determine whether those interests are significant, and weigh any such interests against competing policy concerns.[83] In this case, any reliance on the preamble of the 2024 Final Rule was unjustified because the preamble language does not carry the force or effect of law and is contradicted by a statutory exclusion of gender identity disorders that are not caused by physical impairments. The Department thus does not believe that the preamble language to the 2024 Final Rule created any legally significant right or obligation that could give rise to serious reliance interests.[84]

Additionally, the Department clarified in its 2025 Notice, less than a year after the 2024 Final Rule was published, that the preamble language carried no force or effect of law.[85] Even if a recipient were to assert that it had no actual knowledge of the 2025 Notice, the 11-month timeframe during which reliance interests could have developed based on the preamble language in this case differs notably from the longstanding policies that are generally associated with serious reliance interests.[86] Indeed, for decades after the ADA's 1990 implementation and exclusions, and prior to the rulemaking for the 2024 Final Rule, HHS refrained from interpreting gender dysphoria not resulting from physical impairments as separate from gender identity disorders not resulting from physical impairments. It is reasonable to believe that covered entities and individuals had a longstanding reliance interest that gender identity disorders, including gender dysphoria, not resulting from physical impairments were excluded from the terms ''disability'' and ''individual with a disability'' under section 504.

For these reasons, the Department believes that reliance interests as a result of the preamble language of the 2024 Final Rule, if any, are minimal and are entitled to little weight. Any such interests are outweighed by the need to resolve the confusion and uncertainty brought about by the preamble language and realign the rule with the intent of Congress.

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[83] *Dep't of Homeland Security* v. *Regents of the Univ. of Cal.,* 591 U.S. 1, 33 (2020).

[84] *See id.* at 32 (an agency may determine that ''reliance interests in benefits that it views as unlawful are entitled to no or diminished weight''); *see also Food and Drug Administration* v. *Wages and White Lion Invs., L.L.C.,* 604 U.S. 542, 585 (2025) (agency enforcement priorities, which have no force or effect of law, create no legitimate reliance interest).

[85] 90 FR 15412 (Apr. 11, 2025).

[86] *Cf. Encino Motorcars, LLC* v. *Navarro,* 579 U.S. 211, 212–213 (2016) (industry relied on overtime pay rule for decades in structuring compensation arrangements and agency must address those longstanding reliance interests when changing course).

Comment: Some commenters noted that in terms of reliance interests, the Department should consider how states could be exposed to litigation as a result of the 2024 Final Rule preamble language.

Response: The Department acknowledges commenters' concerns that retaining ambiguous preamble language could create inconsistent interpretations and potential litigation risks for states. The language regarding gender dysphoria in the preamble of the 2024 Final Rule could have led states to make changes to their policies and practices. This rule correcting an ambiguity may help eliminate unnecessary investigations, enforcement actions, and private litigation by clarifying that gender dysphoria not resulting from physical impairments is statutorily excluded from the definition of disability under section 504.

Comment: Some commenters stated their opinions that individuals with gender dysphoria not resulting from physical impairments relied on the preamble language in the 2024 Final Rule to the extent that they believed they were protected against disability discrimination in being denied health care services based on their gender dysphoria. They argued that individuals with such gender dysphoria, including individuals with gender dysphoria as well as other disabilities, may now be denied allegedly medically necessary services or receive discriminatory services, resulting in what they assert are poor health outcomes. Some commenters also stated that the reliance interests resulted from the bulk of caselaw that found gender dysphoria could be a disability under section 504, not the Department's 2024 rulemaking.

Response: As stated before, any reliance on the preamble of the 2024 Final Rule was objectively unjustified because the preamble language does not carry the force or effect of law, a 2025 Notice from the Department clarified the Department's position putting recipients on constructive notice,[87] and prior to the 2024 Final Rule, the Department had not interpreted gender dysphoria not resulting from physical impairments as a disability. Indeed, the preamble language in the Final 2024 Rule is contradicted by a statutory exclusion of gender identity disorders that are not caused by physical impairments. When a regulation contradicts other agency and statutory materials, there is good reason to promulgate a new regulation or amend the existing regulation in order to eliminate confusion and ensure that no one incorrectly relies on the mistaken interpretation to their detriment.[88]

While some courts have found that section 504's statutory exclusion does not encompass gender dysphoria, other federal district courts have come to the opposite conclusion and found that gender dysphoria not caused by a physical impairment is not a disability under section 504.[89] While no Circuit Court has reached the latter conclusion, those cases are winding their way through litigation, and the Department maintains that the body of conflicting case law undermines the strength of any reliance interest and is all the more reason to issue this regulation definitively settling the question and preventing any future misplaced reliance.

The Department acknowledges the concerns from some commenters who believe that individuals with gender dysphoria not resulting from physical impairments may believe that they will be denied certain procedures because gender dysphoria not resulting from physical impairments is not a disability under this rule. The concerns, however, are misplaced because this rule does not alter recipients' obligations under existing regulations prohibiting discrimination on the basis of sex or qualifying disability—it solely ensures that section 504 is applied within its statutory limits.

The Department is also not aware of any changes in behavior by recipients or individuals as a result of the gender dysphoria language in the preamble to the 2024 Final Rule, its 2025 Notice, or this rulemaking. The Department has the discretion and authority to investigate any allegation of discrimination within its jurisdiction and will pursue appropriate remedial action in its discretion to resolve a violation of the law.

Comments on the Progression of Definitions in the DSM

Comments: Many commenters agreed that regardless of any changes that the American Psychiatric Association has made over the years to the definition of gender identity disorders, gender dysphoria, or similar diagnoses, the Department must consider the definition of gender identity disorders at the time the statutory language at issue was enacted. They argued that the Department, much like courts, must interpret the words of a statute consistent with their ordinary meaning at the time Congress enacted the statute. They also stated that the current definition of gender dysphoria as defined in the DSM–5 amounts to a subset of gender identity disorders as defined in the DSM–III–R. The essential feature of gender identity disorders in the DSM–III–R is an incongruence between assigned sex and gender identity.[90] The essential features of gender dysphoria in the DSM–5 are marked incongruence between experienced or expressed gender and assigned gender, of at least six months' duration along with associated clinically significant distress.[91] This means that a person with gender dysphoria necessarily has a gender identity disorder as contemplated in 1990 and would be excluded from the protections of section 504.

Response: The Department agrees with these commenters. To correctly interpret what diagnoses are excluded from the definition of disability, the Department must consider how those diagnoses fit into the exclusions at a single point in time—when Congress passed the underlying statute in 1990.

When the Department considers the more contemporary term of gender dysphoria through the lens of gender identity disorders as defined in 1990, the similarities are overwhelming. As the commenters note, an individual with gender dysphoria would likely be diagnosed with a gender identity disorder in 1990. In order to experience the distress required under gender dysphoria, that person must identify with the other sex or gender in a manner that would have resulted in a diagnosis of a gender identity disorder in 1990.

Comments: Some commenters also noted that individuals with a persistent discomfort around their assigned sex and a preoccupation with getting rid of their sex characteristics would have likely been diagnosed with transsexualism in the DSM–III–R, and that the diagnosis for transsexualism is similar to the diagnosis for gender dysphoria. Because transsexualism is excluded from the term disability in the underlying statute, they argue that gender dysphoria should likewise be excluded.

[87] 90 FR 15412 (Apr. 11, 2025).

[88] *Smiley* v. *Citibank (South Dakota), N.A.,* 517 U.S. 735, 742 (1996).

[89] *See De Rossitte* v. *Bondi,* No. 6:25–cv–06113–SOH–MEF, 2025 WL 3899851 at *2 (W.D. Ark. Dec. 18, 2025); *Doe* v. *Northrop Grumman Systems Corp.,* 418 F. Supp. 3d 921, 929 (N.D. Ala. 2019); *Duncan* v. *Jack Henry & Assocs., Inc.,* 617 F. Supp. 3d 1011, 1051–1057 (W.D. Mo. 2022); *Johnson* v. *Fresh Mark, Inc.,* 337 F. Supp. 2d 996, 1001–1002 (N.D. Ohio 2003); *Michaels* v. *Akal Sec., Inc.,* No. 09–cv–01300–ZLW–CBS, 2010 WL 2573988 at *6 (D. Colo. Jun. 24, 2010); *Parker* v. *Strawser Constr., Inc.,* 307 F. Supp. 3d 744, 753–755 (S.D. Ohio 2018).

[90] *See* DSM–III–R at p. 261.

[91] *See* DSM–5 at p. 452.

Response: The Department believes that the diagnosis for gender identity disorders (not resulting from physical impairments) under the DSM–III–R is the more appropriate analogue to the diagnosis for gender dysphoria under the DSM–5. This is because the DSM–III–R includes a number of disorders under the umbrella of ''gender identity disorders,'' including ''Gender Identity Disorder of Childhood,'' ''Transsexualism,'' ''Gender Identity Disorder of Adolescence or Adulthood, Nontranssexual Type (GIDAANT),'' and ''Gender Identity Disorder Not Otherwise Specified.'' [92] Common to all of these gender identity disorders was distress with an individual's biological sex and the desire to be of the other sex.[93] Claiming that gender dysphoria would only fall within the category of transsexualism would potentially ignore instances where gender dysphoria more appropriately falls into the category of gender identity disorder of childhood or GIDAANT, both of which are included within gender identity disorders. Importantly, the American Psychiatric Association has stated that it largely replaced the diagnosis of gender identity disorders with that of gender dysphoria.[94]

Comments: Some commenters argued that the majority of instances of gender dysphoria are not caused by physical impairments and urge the Department to include regulatory text in this rulemaking on the issue. These commenters argue that the plain meaning of ''physical impairment'' along with language in the regulation implementing the 2008 ADAAA [95] advance the notion that gender dysphoria resulting from a physical impairment only applies to instances such as congenital development of ambiguous genitalia, congenital disjunction of internal and external sex anatomy, sex chromosome anomalies, or disorders of gonadal development.

Response: The exclusion of gender identity disorders not resulting from physical impairments has existed for decades and is well established. The Department does not intend to change the standard for gender dysphoria resulting from physical impairment in this rulemaking.

Comments: One commenter noted that the current DSM–5 reclassified other categories that were excluded in DSM–III–R, including voyeurism and exhibitionism, and asked the Department whether those previously excluded categories could be considered disabilities under the 2024 Final Rule.

Response: Any reclassified category or diagnosis that falls within the exclusions in 29 U.S.C. 705(20)(F) would not qualify as a disability under section 504.

Comments: One commenter stated that the DSM–5 changed the diagnosis of gender identity disorders to gender dysphoria, not for clinical reasons, but for political ones.

Response: Regardless of the reason for the change by the American Psychiatric Association, the diagnosis of gender dysphoria is a subset of the diagnosis of gender identity disorders and, thus, warrants its exclusion from the term disability under section 504.

Comments on Regulatory Alternatives

Comment: Three states stated that the Department should rescind the entirety of the 2024 Final Rule, including all new sections concerning nondiscriminatory medical treatment, value assessments, child welfare, effective communication, integration, web access, and medical diagnostic equipment. They stated that the 2024 Final Rule, and anything that ''exceeds statutory authority'' amounts to an unfunded mandate that intrudes on state sovereignty.

Response: These comments are beyond the scope of this rulemaking.

Comment: Some commenters asserted that the Department should not repeal the 2024 Final Rule. They noted that the 2024 Final Rule underwent a lengthy notice and comment period that resulted in over 5,000 comments that the Department considered before publishing the Final Rule. Some commenters stated that the 2024 Final Rule resulted in a myriad of legal protections for people with disabilities, some of which commenters argued were the result of forty years of case law, advocacy, and lawmaking. Commenters asserted that rescinding the 2024 Final Rule would deprive people with disabilities of specific rights. Commenters argued that repeal of the 2024 Final Rule would likely harm individuals with disabilities, including paralyzed veterans and people with muscular dystrophy, by eliminating accessibility requirements for medical diagnostic equipment. Many of those commenters expressed their belief that the Department should keep the 2024 Final Rule intact, and that all of the alternatives that the Department considered before conducting this rulemaking (aside from keeping the 2024 Final Rule as is) amount to reduced protections that help bad actors limit liability.

Response: This comment is beyond the scope of the proposed rule, which addresses a narrow, targeted issue. The ambiguity in the preamble concerning gender dysphoria is distinct from and severable from the protections for individuals with disabilities brought about in the 2024 Final Rule and can be addressed through targeted clarification.

Comments: Many commenters recommended that the Department maintain the 2024 Final Rule and its preamble in its entirety and forego this current rulemaking. Some commenters recommended that the Department withdraw the rule and follow the precedent of court decisions that it cited in the 2024 Final Rule. Those commenters assert that if another circuit court comes to an opposite conclusion to the one reached by the Fourth Circuit concerning whether gender dysphoria not resulting from physical impairments may be a disability under section 504, the Department would have a better justification for this rulemaking. They also contend that a circuit split may result in the Supreme Court weighing in and delivering finality on the matter.

Response: The Department believes that the correct course of action is to conduct rulemaking that promulgates a definition of disability that is the best reading of the statute. The Department is not required to wait an unspecified period of time while additional courts, and possibly the Supreme Court, may or may not deliver opinions on this matter. If the Supreme Court issues an opinion that affects this rulemaking, the Department will respond accordingly to ensure that it correctly interprets the law.

Comment: One commenter stated that the alternatives listed were not seriously considered and that the Department always intended to conduct rulemaking on this issue.

Response: The Department considered alternatives and sought input from the public before issuing a Final Rule. The Department believes that rulemaking is the only way to meaningfully clarify whether gender dysphoria not resulting from physical impairments is covered under section 504.

In addition to notice-and-comment rulemaking, the Department considered several potentially viable alternatives. Leaving the existing preamble language to the 2024 Final Rule in place may lead to the same result after hypothetical future litigation, but that path would not resolve the ambiguity in the meantime, leaving interested parties uncertain of

[92] *See* DSM–III–R at 71–78.

[93] *Id.*

[94] American Psychiatric Association, Gender Dysphoria Diagnosis: History, *https://www.psychiatry.org/psychiatrists/diversity/education/transgender-and-gender-nonconforming-patients/gender-dysphoria-diagnosis* (last visited July 22, 2026).

[95] 29 CFR 1630.2(h)(1).

their rights and obligations under existing law. Guidance would also be insufficient to resolve the confusion. Issuing guidance would create conflicting non-binding authority and potentially leave the confusion unresolved. As noted above, repealing the entire rule would be a disproportionate response to the issue of the status of gender dysphoria not resulting from physical impairments and would result in the loss of important protections for individuals with disabilities.

Comment: In response to the request for comments concerning alternatives to a proposed rule, one commenter said that a proposed rule is appropriate because the alternatives are insufficient to clarify the confusion caused by the preamble language to the 2024 Final Rule.

Response: The Department also agrees that the alternatives to a full rulemaking with public comment would be insufficient to address the confusion and burdens caused by the preamble language in the 2024 Final Rule. As long as the regulation text at section 84.4(g) remains silent on whether gender dysphoria may be a covered disability, the Department is concerned that the public may believe that the Department enforces an incorrect legal interpretation of section 504.

Comment: One commenter suggested that because this rulemaking concerns a single issue that only arises from preamble language in the 2024 Final Rule, the Department should publish a request for information on the subject before engaging in rulemaking.

Response: While Congress gave the Department authority to interpret the non-discrimination requirements of the statute, the preamble to the 2024 Final Rule went beyond statutory limits when it interpreted the definition of disability in a manner that included a condition excluded by Congress. The Department is constrained by that statutory exclusion and believes that a request for information prior to rulemaking is not necessary. Furthermore, the Department believes that the notice-and-comment process has given adequate opportunity for public engagement. The Department received over 300 comments from the public and has evaluated and considered each comment.

Comments Offering Other Recommendations

Comments: Some commenters think that the Department should go beyond what it is proposing in this rulemaking. One commenter requested that the Department ''fix the physical impairment loophole,'' by stating that gender dysphoria is not caused by a physical impairment.

Response: The Department does not intend to ignore or challenge the statutory text of 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) by claiming that gender identity disorders or gender dysphoria may not be caused by physical impairments. Congress made clear that gender identity disorders not caused by physical impairments are excluded from the definition of disability in section 504. Logically, this means that gender identity disorders caused by physical impairments may be considered disabilities under section 504, provided the other requirements of the definition of disability are satisfied. This rulemaking does not alter that basic understanding that has been in place since 1990.

Comments: Some commenters recommended that this rule or any future regulation on section 504 should allow recipients to only provide care within the bounds of their religious beliefs.

Response: This comment is beyond the scope of this rulemaking. There are numerous statutory protections [96] for health care providers that deal with instances in which a specific requested treatment would violate their conscience or religious beliefs.

Comments: Some commenters recommended that the Department also provide an expanded definition for ''transsexualism'' as used in the statute similar to the definition from the DSM–III–R.

Response: The Department thanks the commenter for the recommendation, but the recommendation is beyond the scope of this rulemaking. This rulemaking only intends to address the confusion caused by the 2024 Final Rule preamble which dealt with gender identity disorders and gender dysphoria.

Comments: One commenter requested that the Department provide extensive guidance on how the exclusions to the definition of disability would be applied in practice, how complaint investigations would be conducted when gender dysphoria is present alongside other disabilities, how the Department would ensure that people with gender dysphoria were not harmed, and how the Department would communicate any changes to recipients.

Response: Because this rulemaking only clarifies that gender dysphoria fits into a long-standing statutory exclusion, it is not necessary for the Department to pursue such guidance at this time.

Other Comments

Comments: Some commenters expressed their belief that this rulemaking would not save money but rather waste it by spending time and effort on a rulemaking that will likely be successfully challenged in court.

Response: The Department is undertaking this rulemaking because it believes that the 2024 Final Rule preamble misinterpreted the underlying statute and extended disability nondiscrimination protections to individuals beyond the scope of the statute. This rulemaking is intended to correct that ambiguity and avoid future legal challenges that would waste the time and resources of all involved.

Comments: Many commenters expressed their general beliefs concerning gender dysphoria and individuals who identify as transgender. For example, some commenters stated that there are only two sexes, there is no immutable incongruent gender identity—only social constructs that make people believe they are transgender, and that sex-rejecting medications and surgeries themselves cause individuals to be physically disabled. Some commenters stated that any rulemaking that the Department does concerning section 504 should include an exemption for religious beliefs, especially if gender dysphoria is considered a disability under section 504.

Response: This rulemaking takes no position beyond interpreting the statutory exclusions to the definition of disability under section 504, including gender identity disorders not resulting from physical impairments and gender dysphoria not resulting from a physical impairment.

Concerning religious exemptions, the Department appreciates this suggestion. The Department does note that Federal laws prohibit certain providers and patients from being forced to perform or submit to certain procedures due to their sincerely held beliefs, such as the Church Amendments,[97] Public Health Service Act § 245 (the Coats-Snowe Amendment),[98] and the Weldon Amendment.[99]

Comments: Some commenters stated that excluding people with gender dysphoria not resulting from physical impairments from disability protections

[96] *See, e.g.,* Church Amendments (42 U.S.C. 300a–7, *et seq.*); Coats-Snowe Amendment (42 U.S.C. 238n).

[97] 42 U.S.C. 300a–7, *et seq.*

[98] 42 U.S.C. 238n.

[99] Consolidated Appropriations Act, 2026, Public Law 119–75, div. B, tit. V, § 507(d), 140 Stat.173, 317 (Feb. 3, 2026).

will not help people with other disabilities. Rather, they claim that it will inaccurately limit the pool of individuals with disabilities and hamper disability rights efforts. Some commenters also stated that they believed that children with gender dysphoria not resulting from physical impairments in the child welfare system need to be protected from organizations and foster parents that will harm them.

Response: The Department believes that by clarifying the statutory limitations of the definition of disability, the Department will be able to focus more on statutorily accurate allegations of discrimination while covered entities will not have to update policies or procedures or make reasonable modifications for individuals with conditions that are not disabilities under section 504. This will result in more resources being available for individuals with disabilities covered by section 504.

The Department agrees that individuals with disabilities, including children in foster care systems that are covered by Federal nondiscrimination laws, are entitled to appropriate protections. The Department has and will continue to enforce all applicable nondiscrimination laws as written, to ensure that children in the child welfare system are not discriminated against.

Executive Order 12866 Determination

Comments: Some commenters requested additional information as to how this rule would interact with other Federal nondiscrimination laws, such as Title IX of the Education Amendments of 1972.

Response: This rulemaking deals with the definition of disability under the Department's section 504 implementing regulation for recipients of Departmental financial assistance. This rulemaking does not impact Title IX, which prohibits discrimination based on sex in education programs and activities.

Comments on Potential Federalism Implications

Comments: Several commenters expressed concern about conflicting state regulations that consider gender dysphoria to be a disability or a protected class under a different reasoning. They argue that compliance with this rule will force entities to violate their applicable state laws and that this rulemaking violates state sovereignty. Some commenters were concerned about potential costs and burdens that this rule imposes on states and counties, like training and compliance costs as well as burdens on state and county safety nets if individuals who identify as transgender are denied allegedly medically necessary treatment.

Response: In instances in which a state law contradicts Federal nondiscrimination law, the Federal law will usually supersede the conflicting state law.[100] The Department believes that states and counties will realize few, if any, costs from this rulemaking Concerning health care and safety net costs, there is no indication that the 2024 Final Rule preamble language led to any additional provision of procedures related to gender dysphoria, so there is no indication that a reversion to the correct interpretation of the law would cause any decrease in such procedures or associated harms.

Comments: Some commenters stated that the 2024 Final Rule took away control from the states by preempting decisions they believed should remain with states. Such decisions included child welfare custody, placement, and termination decisions, which they believed would be affected if they were required to consider gender dysphoria a disability under section 504. The commenters also believe that if states were required to provide reasonable modifications in situations where gender dysphoria not resulting from physical impairments amounted to a disability under section 504, there would be additional issues they have not yet seen or considered.

Response: The Department is obliged to accurately interpret statutory language and enforce those statutes through regulations, including section 504. When covered entities, including states, violate the requirements of section 504, the Federal government is obligated to enforce the nondiscrimination law through a variety of means. While the Department agrees in this instance that the preamble language to the 2024 Final Rule incorrectly applied the law by misinterpreting the underlying statute, states and local governments that receive financial assistance from the Department are still required to comply with section 504. When child welfare custody, placement, and termination decisions result in discrimination, such as when a child is removed from the custody of a parent with a disability not because the parent has abused or neglected the child but solely because of the child welfare agency's stereotypes and biases concerning parents with disabilities, the child welfare agency has violated Federal civil rights laws. Concerns over what would constitute a reasonable modification for an individual with gender dysphoria not resulting from physical impairment are part of the confusion that this rulemaking is attempting to avoid.

[100] U.S. Const. art. VI, cl. 2.

IV. Executive Order 12866 and Related Executive Orders on Regulatory Review

Executive Order 12866 Determination

Pursuant to Executive Order 12866, this rulemaking has been designated as a significant regulatory action under subsection 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Executive Order 12250 on Leadership and Coordination of Nondiscrimination

Pursuant to Executive Order 12250, the Attorney General has the responsibility to ''coordinate the implementation and enforcement by Executive agencies of . . . ''[a]ny other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.'' Executive Order 12250 at § 1–201(d), 45 FR 72995 (Nov. 2, 1980). The rule was reviewed and approved under Executive Order 12250.

Regulatory Impact Analysis Summary

As the Department noted in its proposed rule for this rulemaking, it believes that any costs associated with this rulemaking would be negligible. This is because this rulemaking will not require recipients to purchase new equipment, alter benefits, train employees, or change their practices in any way based on this clarification. Rather, recipients would merely need to ensure that they continue to recognize the definitions of disability and individual with a disability that have been part of the statute for decades. While the Department believes that this rulemaking will result in marked benefits, such as avoiding confusion among recipients and individuals, limiting potential litigation, and restoring confidence in the plain interpretation of statutory language, it has not been able to quantify such benefits in past rulemakings and cannot do so with any certainty.

The comments received in this rulemaking have not altered the Department's belief that this rulemaking will not result in additional costs for recipients or individuals. Some commenters expressed their beliefs that

this rulemaking may result in additional litigation from individuals or organizations challenging its legality, but the Department does not believe such speculative costs could be monetized with any level of accuracy. Every rulemaking, particularly rulemaking concerning politically sensitive subjects, has the potential to be challenged in court, and the Department declines to associate costs with defending such legal challenges here.

The Department considered a single alternative to this rulemaking—foregoing rulemaking and relying on the 2025 Notice [101] to communicate that the preamble language of the 2024 Final Rule does not have the force or effect of law and cannot be enforced. Under this alternative, no further rulemaking would have been needed; HHS would have amplified the April 2025 notice through its listservs and the media in lieu of staff time spent developing the proposed rule, examining public comments, and formulating this final rule. This alternative was not pursued because it likely would not have been as effective at eliminating confusion from the 2024 Final Rule preamble language. The 2025 Notice, while public, is not linked to the Code of Federal Regulations web page for 45 CFR pt. 84 that implements section 504 to HHS recipients and contains the terms ''disability,'' ''individual with a disability,'' and their exclusions, among other provisions. The 2025 Notice is also not linked to the 2024 Final Rule on the **Federal Register** website. Without a clear regulatory change from the Department, confusion would persist, generating possible downstream impacts from the lack of clarity.

Regulatory Flexibility Act—Small Entity Analysis

The Regulatory Flexibility Act (RFA), Public Law 96–354, applies to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).

Because this rule clarifies limited aspects of the definitions of ''disability'' and ''individual with a disability'' under section 504, any associated costs to recipients, including small entities, is negligible. Recipients will not have to purchase new equipment, alter benefits, or change their practices in any way based on this clarification. The Department certifies that this rule will not have a significant effect on small entities.

[101] 90 FR 15412 (Apr. 11, 2025).

Executive Order 13132: Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on state and local governments or has federalism implications. The Department has determined that this rule does not impose such costs or have any federalism implications. The Department has addressed public comments asserting otherwise in part III of this final rule, Response to Public Comments on the Proposed Rule, under the subheading ''*Comments on Potential Federalism Implications.*''

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR part 1320 appendix A.1), the Department has reviewed this rule and has determined that there are no new or modified collections of information contained therein.

Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the UMRA.

Executive Order 14192: Deregulation

Under Executive Order 14192, Unleashing Prosperity Through Deregulation, executive agencies are required to limit the costs of planned regulations, including by repealing existing regulations for each newly promulgated regulation and/or prioritizing regulations with minimal costs or burdens. This rule will not impose new costs or burdens on recipients because it clarifies an ambiguity created by specific preamble language of the 2024 Final Rule that called into question whether gender dysphoria could be considered a disability.

List of Subjects in 45 CFR Part 84

Adoption and foster care, Civil rights, Childcare, Child welfare, Colleges and universities, Disabled, Discrimination, Equal access to justice, Federal financial assistance, Grant programs, Grant programs—health, Grant programs—social programs, Health, Health care, Health care access, Health facilities, Health programs and activities, Individuals with disabilities, Medical care, Nondiscrimination, Public health.

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR subtitle A, subchapter A, part 84 as set forth below:

PART 84—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 1. The authority citation for part 84 continues to read as follows:

Authority: 29 U.S.C. 794.

Subpart G is also issued under 21 U.S.C. 1174; 42 U.S.C. 4581.

■ 2. Amend § 84.4 by revising paragraph (g) to read as follows:

§ 84.4 Disability.

* * * * *

(g) *Exclusions.* The term ''disability'' does not include the conditions set forth at 29 U.S.C. 705(20)(F), including ''transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders'' under section 705(20)(F)(i). For the purpose of this part, the term ''gender identity disorders not resulting from physical impairments'' includes gender dysphoria not resulting from physical impairments.

Dated: October 29, 2026.

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

[FR Doc. 2026–22380 Filed 10–30–26; 11:15 am]

BILLING CODE 4153–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket No. 98–204; GN Docket No. 25–133; DA 26–1058; FR ID 374758]

Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies; Delete, Delete, Delete

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Media Bureau of the Federal Communications Commission (Commission) adopts an Order that removes a section of the Commission's Rules and references to that section to conform the

Commission's Rules to the decision of the Fifth Circuit Court of Appeals in *National Religious Broadcasters* v. *FCC.*

DATES: Effective November 3, 2026.

FOR FURTHER INFORMATION CONTACT: For further information, contact Joseph Price, Federal Communications Commission, Media Bureau, Policy Division, *Joseph.Price@fcc.gov,* (202) 418–7454.

SUPPLEMENTARY INFORMATION: This is a summary of the document of the Media Bureau's Order, in MB Docket No. 98–204, GN Docket No. 25–133, DA 26–1058, adopted and released on October 1, 2026. The full text of this document is available for public inspection online at *https://docs.fcc.gov/public/attachments/DA-26-1058A1.pdf* and via the search function on the Commission's Electronic Document Management System (EDOCS) web page at *http://www.fcc.gov/ecfs.* Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format, etc.) and reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) may be requested by sending an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), (202) 418–0432.

Synopsis

The Order of the Media Bureau of the Federal Communications Commission (Commission) conforms parts 73 and 74 of the Commission's rules to the decision of the Fifth Circuit Court of Appeals (Fifth Circuit) in *National Religious Broadcasters* v. *FCC,* 138 F.4th 282 (5th Cir. 2025), nullifying § 73.3612. In the *Delete, Delete, Delete* proceeding, the Commission stated the goal of reviewing its rules ''to identify and eliminate those that are unnecessary in light of current circumstances.'' *Delete, Delete, Delete,* GN Docket No. 25–133, Public Notice, 40 FCC Rcd 1601, 1601 (OMR 2025). Consistent with that goal, the Media Bureau finds § 73.3612 of the Commission's rules ''no longer ha[s] any operative effect,'' and therefore should not remain in the Code of Federal Regulations (CFR).

Section 73.3612 of the Commission's rules, requiring broadcasters to annually submit information regarding their employees' race, ethnicity, and gender within specified job categories, was originally adopted in 1969 and has been suspended since 2001. In 2024, the Commission reinstated § 73.3612. *Review of the Commission's Broadcast & Cable Equal Employment Opportunity Rules & Policies,* MB Docket No. 98–204, Fourth Report and Order and Order on Reconsideration, 39 FCC Rcd 1791, 1798–00, paras. 14–16 (2024). Parties appealed to the Fifth Circuit, challenging the reporting obligation, while § 73.3612 remained deferred. The Fifth Circuit subsequently found the ''[t]he FCC lacks statutory authority to require broadcasters to submit employment data under Form 395–B,'' *National Religious Broadcasters,* 138 F.4th at 296, and, as a result of the court vacating the Commission's 2024 order, the text of § 73.3612 that currently appears in the CFR, and references to § 73.3612 in the CFR, have no legal effect and are obsolete. Accordingly, the Media Bureau of the Commission deletes § 73.3612 and references to § 73.3612 from parts 73 and 74 of the Commission's rules, finding that doing so has no effect on the scope and nature of the currently enforceable Commission requirements and effectuates the Fifth Circuit's holding in *National Religious Broadcasters.*

Pursuant to the good cause exception under 5 U.S.C. 553(b)(B), because we are simply conforming the text of the Commission's rules in the CFR to reflect the court's decision in *National Religious Broadcasters,* and we are not taking any independent action or exercising any discretion, we find that notice and the opportunity for public comment are unnecessary for this action. For the same reason, pursuant to 5 U.S.C. 553(d), this action will be effective immediately upon publication in the **Federal Register**.

The changes to parts 73 and 74 of the Commission's rules to conform to the Fifth Circuit decision in *National Religious Broadcasters* are reflected in Appendix A.

Accordingly, *it is ordered* that parts 73 and 74 of the Commission's rules, Title 47, are amended as set forth in Appendix A, effective upon publication in the **Federal Register**.

This action is taken pursuant to the authority contained in sections 4(i), 4(j), and 155(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(c), and sections 0.61 and 0.283(e) of the Commission's rules, 47 CFR 0.61, 0.283(e).

The Bureau has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Parts 73 and 74

Television.

Federal Communications Commission

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority : 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. Amend § 73.3539 by revising paragraph (b) to read as follows:

§ 73.3539 Application for renewal of license.

* * * * *

(b) No application for renewal of license of any broadcast station will be considered unless there is on file with the FCC the information currently required by §§ 73.3613 through 73.3615, inclusive, for the particular class of station.

* * * * *

§ 73.3612 [Removed]

■ 3. Remove § 73.3612.

Alphabetical Index [Amended]

■ 4. Amend the alphabetical index to part 73 by removing the entry for ''Employment report''.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 5. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336 and 554.

§ 74.780 [Amended]

■ 6. Amend § 74.780 by removing paragraph (b)(3) and redesignating paragraph (b)(4) as paragraph (b)(3).

[FR Doc. 2026–22408 Filed 11–2–26; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 91, No. 211
Tuesday, November 3, 2026

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–11819; Project Identifier AD–2025–01199–R]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, LLC Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 90–19–02, which applies to all MD Helicopters, LLC (type certificate previously held by McDonnell Douglas Helicopter Company) Model 369, 369A, 369D, 369E, 369F, 369FF, 369H, 369HE, 369HM, and 369HS, helicopters, that are equipped with a cargo hook. AD 90–19–02 requires replacing the overrunning clutch assembly and sprag assembly with airworthy parts and repetitively inspecting the sprag assembly, clutch inner and outer races of the overrunning clutch assembly. Since the FAA issued AD 90–19–02, after further analysis the FAA determined that additional helicopter models are affected by this unsafe condition. This proposed AD would expand the applicability and would require removing certain overrunning clutch assemblies and certain overrunning clutch subassemblies from service, installing or replacing parts, and reidentifying certain overrunning clutch assemblies, as applicable. This proposed AD would also require for certain model helicopters, revising the Airworthiness Limitations Section (ALS) of the existing aircraft maintenance manual (AMM) or instructions for continued airworthiness (ICA) and the existing approved maintenance or inspection program, as applicable. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 18, 2026.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2026–11819; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Binod Singh, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5264; email: *binod.singh@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under **ADDRESSES**. Include ''Docket No. FAA–2026–11819; Project Identifier AD–2025–01199–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may revise this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

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 (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive 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. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Binod Singh, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 90–19–02, Amendment 39–6716 55 FR 36270 (September 5, 1990) (AD 90–19–02), for certain McDonnell Douglas Helicopter Company (MDHC) Model 369 series helicopters. AD 90–19–02 was prompted by reports of sprag element chipping and wear of the sprag, cage, and the inner and outer races of the overrunning clutch assembly on all MDHC model helicopters equipped with a cargo hook. AD 90–19–02 requires removing and replacing certain overrunning clutch assemblies. AD 90–19–02 also requires repetitively inspecting certain overrunning clutch assemblies with a certain subassembly installed, and replacing certain sprag assemblies before exceeding a specified life limit. The FAA issued AD 90–19–02 to prevent an overrunning clutch assembly failure, which may result in the loss of engine power to the main rotor.

Actions Since AD 90–19–02 Was Issued

Since the FAA issued AD 90–19–02, an incident occurred involving an MD Helicopters Model 369E helicopter that resulted in a forced emergency landing

due to a total loss of engine power. Subsequent investigation revealed that the in-flight loss of engine power was the direct result of inadequate regreasing of the overrunning clutch output bearing, which caused frictional heating and thermal damage to the clutch inner race, ultimately leading to clutch inner race failure. The investigation also determined that a gap in the applicability of AD 90–19–02 was inadvertently introduced subsequent to the original publication of the AD, allowing certain aircraft to operate without the mandated inspections or modifications. The FAA has determined that MD Helicopters Model 500N helicopters are also affected by the same unsafe condition. The FAA is proposing this AD to ensure the unsafe condition is addressed on these additional helicopters. Additionally, since the FAA issued AD 90–19–02, inspection intervals of the sprag assembly, clutch inner and outer races have been introduced in the ALS of the helicopters' maintenance manual.

FAA's Determination

The FAA is proposing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require for helicopters with certain overrunning clutch assemblies installed, removing from service a certain overrunning clutch subassembly, if installed, and installing certain clutch subassemblies or replacing the clutch assembly with a different part-numbered clutch assembly. This proposed AD would also require reidentifying the overrunning clutch assembly, as applicable.

This proposed AD would require for certain model helicopters, revising the ALS of the existing AMM or ICA and the existing approved maintenance or inspection program, as applicable, by incorporating the actions and associated thresholds and intervals specified in this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 568 helicopters of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the ALS (all 568 helicopters).	1 work-hour × $85 per hour = $85.	$0	$85	$48,280.
Replace and reidentify overrunning clutch subassembly (up to 40 helicopters, see note below).	3 work-hours × $85 per hour = $255.	Up to $34,409	Up to $34,664	Up to $1,386,560.

Note: The FAA believes that most helicopters have incorporated overrunning clutch assembly part number (P/N) 369A5350–605 and thus have also incorporated overrunning clutch subassembly P/N 369A5350–41 or 369A5350–51.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect 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.

For the reasons discussed above, I certify that the proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 90–19–02, Amendment 39–6716 (55 FR 36270, September 5, 1990); and

■ b. Adding the following new airworthiness directive:

MD Helicopters, LLC: Docket No. FAA–2026–11819; Project Identifier AD–2025–01199–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 18, 2026.

(b) Affected ADs

This AD replaces AD 90–19–02, Amendment 39–6716 (55 FR 36270, September 5, 1990) (AD 90–19–02).

(c) Applicability

This AD applies to all MD Helicopters, LLC Model 369, 369A, 369D, 369E, 369F, 369FF, 369H, 369HE, 369HM, 369HS, and 500N helicopters, certified in any category, equipped with a cargo hook.

(d) Subject

Joint Aircraft System Component (JASC) Code 6320, Main rotor drive gearbox/clutch assembly.

(e) Unsafe Condition

This AD was prompted by reports of sprag element chipping and wear of the sprag, cage, and inner and outer races of the overrunning clutch assemblies. The FAA is issuing this AD to prevent overrunning clutch assembly failures caused by such chipping and wear. The unsafe condition, if not addressed, could result in loss of power to the main rotor and loss of control of the helicopter.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

(1) For helicopters with an overrunning clutch assembly part number (P/N) 369A5350–BSC, 369A5350–601, or 369A5350–603 installed, within 300 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first after the effective date of this AD, accomplish all of the following:

(i) Remove from service any overrunning clutch subassembly that does not have P/N 369A5350–41 or 369A5350–51.

(ii) If the overrunning clutch subassembly was removed in accordance with paragraph (g)(1)(i) of this AD, install overrunning clutch subassembly P/N 369A5350–41 or 369A5350–51.

(iii) Reidentify overrunning clutch assembly to P/N 369A5350–605.

(2) For all helicopters except for Model 369 and 369A helicopters, within 30 days after the effective date of this AD: Revise the airworthiness limitations section (ALS) of the existing aircraft maintenance manual (AMM) or instructions for continued airworthiness (ICA), and the existing approved maintenance or inspection program, as applicable, by incorporating the information identified in table 1 to paragraph (g)(2) of this AD.

(3) For Model 369 and 369A helicopters, within 30 days after the effective date of this AD, revise the ALS of the existing AMM or ICA, and the existing approved maintenance or inspection program, as applicable, in accordance with a method approved by the Manager, West Certification Branch, FAA.

TABLE 1 TO PARAGRAPH (g)(2)—AIRWORTHINESS LIMITATION TASKS

Component	Part No.	Finite life hours	Mandatory inspection intervals	Inspection reference task for models 369D/E/F/FF & 500N helicopters	Inspection reference task for models 369H/HE/HS/HM helicopters
Sprag assembly, overrunning clutch.	369D25351 ..... 369A5364	1,800 hours TIS (See Note 1 to Table 1 of this AD).	Every 300 hours TIS or 12 months (annual): whichever occurs first.	CSP–COM–5 Sec. 63–10–10,. Overrunning Clutch Sprag Inspection.	CSP–H–5 Section 3.5, Overrunning Clutch Sprag Inspection.
Clutch inner race, overrunning clutch.	369A5353	.....	Every 300 hours TIS or 12 months (annual): whichever occurs first.	CSP–COM–5 Sec. 63–10–10,. Overrunning Clutch Sprag Inspection.	CSP–H–5 Section 3.5, Overrunning Clutch Sprag Inspection.
Clutch outer race, overrunning clutch.	369A5352	.....	Every 300 hours TIS or 12 months (annual): whichever occurs first.	CSP–COM–5 Sec. 63–10–10,. Overrunning Clutch Sprag Inspection.	CSP–H–5 Section 3.5, Overrunning Clutch Sprag Inspection.

Note 1 to Table 1 of this AD: For the sprag assembly with cargo hook attached and no separate log, the finite life hours is 1,800 hours; with cargo hook attached and with separate log: 1,800 hours of external load operating time when logged separately.

(h) Provisions for Alternative Actions and Intervals

After the action required by paragraph (g)(2) or (g)(3) of this AD has been done, no alternative actions and associated thresholds and intervals are allowed unless they are approved as specified in the provisions of paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, West Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the West Certification Branch, send it to the attention of the person identified in paragraph (j) of this AD and email to: *AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Additional Information

For more information about this AD, contact Binod Singh, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5264; email: *binod.singh@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on October 29, 2026.

Steven W. Thompson,

Acting Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2026–22373 Filed 11–2–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–11821; Project Identifier AD–2026–00567–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2024–25–09, which applies to certain The Boeing Company Model 757 airplanes. AD 2024–25–09 requires installing new relays and changing certain wire bundles leading to the power transfer unit (PTU) control valve. Since the FAA issued AD 2024–25–09, the FAA determined that the requirements bulletin mandated by AD 2024–25–09 contains errors. In some cases, those errors prevent the actions

required by AD 2024–25–09 from being fully accomplished. In other cases, the errors would allow actions that could introduce new hazards affecting the operation and thus the availability of the PTU. This proposed AD would require, depending on the airplane configuration, installing new relays and new connectors, changing certain wire bundles, doing an operational test, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 18, 2026.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2026–11821; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Boeing material identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA 98198. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2026–11821.

FOR FURTHER INFORMATION CONTACT: Katherine Venegas, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562–627–5353; email: *katherine.venegas@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under the **ADDRESSES** section. Include ''Docket No. FAA–2026–11821; Project Identifier AD–2026–00567–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

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 (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive 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. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Katherine Venegas, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562–627–5353; email: *katherine.venegas@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2024–25–09, Amendment 39–22911 (90 FR 1850, January 10, 2025) (AD 2024–25–09), for certain The Boeing Company Model 757 airplanes. AD 2024–25–09 was prompted by reports of several occurrences of a PTU control valve that failed to open when commanded. AD 2024–25–09 requires installing new relays and changing certain wire bundles leading to the PTU control valve. The agency issued AD 2024–25–09 to address failure of the PTU control valve, which, in conjunction with a loss of the left engine or engine-driven pump during takeoff, may result in a failure of the landing gear to retract in a timely manner. This condition, if not addressed, could result in additional drag, a reduced climb gradient, and an inability to clear obstacles on takeoff. This condition can result in loss of continued safe flight and landing.

Actions Since AD 2024–25–09 Was Issued

An operator reported errors in the instructions of Boeing Alert Requirements Bulletin 757–29A0071 RB, dated November 16, 2023, that prevented its accomplishment on airplanes identified as Group 3 airplanes in that requirements bulletin. Since the FAA issued AD 2024–25–09, Boeing has identified additional errors affecting all of the groups in that requirements bulletin, including errors that would allow actions that could introduce new hazards.

The FAA assessed the new hazards. Although the agency quantitatively assessed the new hazards to be of relatively low risk, the FAA determined that they could affect the operation and thus the availability of the PTU. The PTU is required to operate as a safety system backup. The new hazards that the errors could introduce are therefore a safety concern. The original unsafe condition also remains, because the corrective action AD 2024–25–09 requires cannot be accomplished as intended on certain airplanes.

On April 6, 2026, the FAA issued Special Airworthiness Information Bulletin 2026–09 as an interim action to advise owners and operators of the errors and to recommend actions before AD 2024–25–09 is superseded by this proposed AD. Boeing has since issued Boeing Alert Requirements Bulletin 757–29A0071 RB, Revision 1, dated May 28, 2026, to correct the errors.

The FAA also issued FAA letter 523–26–00077, dated April 29, 2026, to identify the applicable set of deviations approved as an alternative method of compliance (AMOC) to AD 2024–25–09. Accomplishing Boeing Alert Requirements Bulletin 757–29A0071 RB, dated November 16, 2023, in combination with the applicable AMOC specified in the FAA letter achieves a configuration consistent with Boeing Alert Requirements Bulletin 757–29A0071 RB, Revision 1, dated May 28, 2026.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 757–29A0071 RB, Revision 1, dated May 28, 2026. This material specifies procedures for, depending on the airplane configuration, installing new relays and a new connector in the P33 panel, installing new connectors and changing certain wire bundles (*e.g.,* changing bundles leading to the PTU control valve, changing bundles between certain panels, changing bundles between certain panels and certain disconnect brackets, and other wire bundle changes that include installing a new wire bundle clamp and lacing tape on wire bundle W4236, changing the position of a wire bundle W4236 ground wire, installing white lacing tape on wire bundle W2514), and doing general visual inspections for correct wire bundle W2514 routing and for a missing seal ring at the right body fairing feedthru seal. This material also specifies applicable on-condition actions. On-condition actions include correcting the routing of wire bundle W2514 through the clamp aft of disconnect bracket AD0880, installing a seal ring at the right body fairing feedthru seal, and doing applicable corrective actions to address failed operational tests and repeating the operational test until the test passes.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the material already described, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this material at *regulations.gov* under Docket No. FAA–2026–11821.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 467 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Relay and connector installation, wire bundle changes, and operational test.	Up to 45 work-hours × $85 per hour = $3,825.	$4,730	$8,555	Up to $3,995,185.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of the proposed general visual inspections and operational tests. The agency has no way of determining the number of aircraft that might need these on-condition actions.

ESTIMATED COSTS FOR ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
Wire bundle W2514 re-routing	1 work-hour × $85 per hour = $85	$0	$85
Seal ring installation	1 work-hour × $85 per hour = $85	10	95

* The FAA has received no definitive data on the cost of corrective actions to address failed operational tests.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect 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.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2024–25–09, Amendment 39–22911 (90 FR 1850, January 10, 2025), and
■ b. Adding the following new AD:

The Boeing Company: Docket No. FAA–2026–11821; Project Identifier AD–2026–00567–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 18, 2026.

(b) Affected ADs

This AD replaces AD 2024–25–09, Amendment 39–22911 (90 FR 1850, January 10, 2025) (AD 2024–25–09).

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 757–29A0071 RB, Revision 1, dated May 28, 2026.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power.

(e) Unsafe Condition

This AD was prompted by reports of several occurrences of a power transfer unit (PTU) control valve that failed to open when commanded, and the determination that errors in the service information required by AD 2024–25–09 prevent accomplishment of the actions on certain airplanes and would allow actions that could introduce new hazards affecting the operation and thus the availability of the PTU. The FAA is issuing this AD to address failure of the PTU control valve, which, in conjunction with a loss of the left engine or engine-driven pump during takeoff, may result in a failure of the landing gear to retract in a timely manner. The unsafe condition, if not addressed, could result in additional drag, a reduced climb gradient, and an inability to clear obstacles on takeoff, resulting in loss of continued safe flight and landing.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–29A0071 RB, Revision 1, dated May 28, 2026, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–29A0071 RB, Revision 1, dated May 28, 2026.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–29A0071, Revision 1, dated May 28, 2026, which is referred to in Boeing Alert Requirements Bulletin 757–29A0071 RB, Revision 1, dated May 28, 2026.

(h) Exceptions to Requirements Bulletin Specifications

Where the ''Effectivity'' paragraph and the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–29A0071 RB, Revision 1, dated May 28, 2026, refer to the Revision 1 date of Requirements Bulletin 757–29A0071 RB, this AD requires using the effective date of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the material specified in paragraph (i)(1) of this AD in combination with the applicable alternative method of compliance (AMOC) specified in paragraph (i)(2) of this AD.

(1) Boeing Alert Requirements Bulletin 757–29A0071 RB, dated November 16, 2023, except where the figures in the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–29A0071 RB, dated November 16, 2023, specify certain positions on the P33 panel and disconnect bracket AD0880 or AD0881 for installing the connectors, this AD allows any open position on the P33 panel or disconnect bracket AD0880 or AD0881 for installing the connectors. Boeing Alert Requirements Bulletin 757–29A0071 RB, dated November 16, 2023, was incorporated by reference in AD 2024–25–09.

(2) The applicable set of deviations approved as an AMOC to AD 2024–25–09 and identified in the enclosure to FAA letter 523–26–00077, dated April 29, 2026, which is not incorporated by reference in this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(3) AMOCs approved for AD 2024–25–09 are approved as AMOCs for the corresponding provisions of Boeing Alert Requirements Bulletin 757–29A0071 RB, Revision 1, dated May 28, 2026, that are required by paragraph (g) of this AD.

(k) Additional Information

(1) For more information about this AD, contact Katherine Venegas, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562–627–5353; email: *katherine.venegas@faa.gov.*

(2) Boeing material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (l)(3) of this AD.

(3) FAA letter 523–26–00077 and its enclosure are located in the AD docket and may be viewed at *regulations.gov* under Docket No. FAA–2026–11821.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Requirements Bulletin 757–29A0071 RB, Revision 1, dated May 28, 2026.

(ii) [Reserved]

(3) For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA 98198. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on October 29, 2026.

Brian Knaup,

Acting Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2026–22383 Filed 11–2–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–13795; Project Identifier MCAI–2026–00716–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Helicopters Model AS350B2, AS350B3, and EC130B4 helicopters. This proposed AD was prompted by a report of an occurrence of partial blocking of a pilot pedal. This proposed AD would require modifying and reidentifying an affected fuse cover and would prohibit installing an affected fuse cover on any helicopter. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by December 18, 2026.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2026–13795; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 10101 Hillwood Parkway, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Michael M. Yeshiambel, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946–4133; email: *michael.m.yeshiambel@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under **ADDRESSES**. Include ''Docket No. FAA–2026–13795; Project Identifier MCAI–2026–00716–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

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 (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive 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. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Michael Yeshiambel, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2026–0052R2, dated September 24, 2026 (EASA AD 2026–0052R2) (also referred to as the MCAI), to correct an unsafe condition on certain Airbus Helicopters Model AS 350 B2, AS 350 B3, and EC 130 B4 helicopters. The MCAI states that an occurrence of partial blocking of the pilot pedal was reported. The MCAI also states further investigation indicated that this event was caused by an interference between the left pedal of the pedal block and the partially detached fuse cover of the circuit breaker panel. This condition, if not corrected, could result in reduced yaw control of the helicopter.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2026–13795.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2026–0052R2, which specifies procedures for modifying and reidentifying a fuse cover with part number (P/N) 350A76–2395–20, P/N 350A76–2395–21, or P/N 350A76–2395–23, installed on a certain part-numbered control unit, except those which have been modified and reidentified. EASA AD 2026–0052R2 also prohibits installing an affected fuse cover on any affected helicopter.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

These products have been approved by the civil aviation authority (CAA) of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2026–0052R2, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some CAA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA

AD 2026–0052R2 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2026–0052R2 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2026–0052R2 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2026–0052R2. Material required by EASA AD 2026–0052R2 for compliance will be available at *regulations.gov* under Docket No. FAA–2026–13795 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,034 helicopters of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modify and reidentify fuse cover	2 work-hours × $85 per hour = $170	$27	$197	$203,698

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect 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.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Airbus Helicopters: Docket No. FAA–2026–13795; Project Identifier MCAI–2026–00716–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 18, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model AS350B2, AS350B3, and EC130B4 helicopters, certified in any category, as identified in European Union Aviation Safety Agency AD 2026–0052R2, dated September 24, 2026 (EASA AD 2026–0052R2).

(d) Subject

Joint Aircraft System Component (JASC) Code 3110, Instrument panel.

(e) Unsafe Condition

This AD was prompted by a report of an occurrence of partial blocking of a pilot pedal. The FAA is issuing this AD to prevent interference between the left pedal of the pedal block and the fuse cover. The unsafe condition, if not addressed, could result in reduced yaw control of the helicopter.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2026–0052R2.

(h) Exceptions to EASA AD 2026–0052R2

(1) Where EASA AD 2026–0052R2 refers to March 26, 2026 [the effective date of the original issue of EASA AD 2026–0052R2], this AD requires using the effective date of this AD.

(2) Where EASA AD 2026–0052R2 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(3) This AD does not adopt the ''Remarks'' section of EASA AD 2026–0052R2.

(i) No Reporting Requirement

Although the material referenced in EASA AD 2026–0052R2 specifies to submit certain information to the manufacturer, this AD does not require that action.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local flight standards district office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: *AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Additional Information

For more information about this AD, contact Michael Yeshiambel, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946–4133; email: *michael.m.yeshiambel@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2026–0052R2, dated September 24, 2026.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 10101 Hillwood Parkway, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on October 30, 2026.

Steven W. Thompson,

Acting Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2026–22400 Filed 11–2–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–11822; Project Identifier MCAI–2026–00384–T]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2024–17–03, which applies to certain Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 IGW, and –100 ECJ airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes. AD 2024–17–03 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2024–17–03, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require certain actions in AD 2024–17–03 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 18, 2026.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2026–11822; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Agência Nacional de Aviação Civil (ANAC) material identified in this proposed AD, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br.* You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.* It is also available at *regulations.gov* under Docket No. FAA–2026–11822.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Taylor Stanley, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 407–852–7677; email: *Taylor.Stanley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under the **ADDRESSES** section. Include ''Docket No. FAA–2026–11822; Project Identifier MCAI–2026–00384–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

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 (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive 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. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Taylor Stanley, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 407–852–7677; email: *Taylor.Stanley@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2024–17–03, Amendment 39–22828 (89 FR 79416, September 30, 2024), for certain Model

ERJ 190–100 STD, –100 LR, –100 IGW, and –100 ECJ airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes. AD 2024–17–03 was prompted by an MCAI originated by ANAC, which is the aviation authority for Brazil. ANAC issued ANAC AD 2023–12–02, effective December 15, 2023 (ANAC AD 2023–12–02), to correct an unsafe condition.

AD 2024–17–03 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2024–17–03 to address failure of certain system components, which could result in reduced structural integrity and system reliability of the airplane.

Actions Since AD 2024–17–03 Was Issued

Since the FAA issued AD 2024–17–03, ANAC superseded ANAC AD 2023–12–02 and issued ANAC AD 2026–04–01, effective April 13, 2026 (ANAC AD 2026–04–01) (also referred to as the MCAI), for all-Model ERJ 190–100 STD, –100 LR, –100 IGW, –100 SR, and –100 ECJ airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes. Model ERJ 190–100 SR airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states that new or more restrictive airworthiness limitations have been developed.

The FAA is proposing this AD to address failure of certain system components, which could result in reduced structural integrity and system reliability of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2026–11822.

Material Incorporated by Reference Under 1 CFR Part 51

ANAC AD 2026–04–01 specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This proposed AD would also require ANAC AD 2023–12–02, effective December 15, 2023, which the Director of the Federal Register approved for incorporation by reference as of November 4, 2024 (89 FR 79416, September 30, 2024).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2024–17–03. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in ANAC AD 2026–04–01 already described, as proposed for incorporation by reference. Any differences with ANAC AD 2026–04–01 are identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (l)(1) of this proposed AD.

Other Relevant Rulemaking

The FAA issued AD 2025–14–05, Amendment 39–23083 (90 FR 34168, July 21, 2025) (AD 2025–14–05), which applies to certain Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 SU, –200 STD, and –200 LL airplanes; and Model ERJ 190–100 STD, –100 LR, –100 ECJ, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes. AD 2025–14–05 requires repetitive detailed inspections for cracking of the engine inboard and outboard engine pylon lower link lugs, and repair if necessary. AD 2025–14–05 also specifies that revising the maintenance or inspection program to incorporate airworthiness limitations documents at a certain revision, or later revisions approved by ANAC, is terminating action for the repetitive inspections.

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations as specified in a later revision of the airworthiness limitations documents. Therefore, accomplishing the requirements of this proposed AD would terminate the requirements of AD 2025–14–05 for Model ERJ 190–100 STD, –100 LR, –100 IGW, and –100 ECJ airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to retain the Incorporation by Reference (IBR) of ANAC AD 2023–12–02 and incorporate ANAC AD 2026–04–01 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with ANAC AD 2023–12–02 and ANAC AD 2026–04–01 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Material required by ANAC AD 2023–12–02 is available at *regulations.gov* by searching for and locating Docket No. FAA–2024–0994 and material required by ANAC AD 2026–04–01 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2026–11822 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators

must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 46 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2024–17–03 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the average total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect 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.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2024–17–03, Amendment 39–22828 (89 FR 79416, September 30, 2024); and

■ b. Adding the following new AD:

Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.): Docket No. FAA–2026–11822; Project Identifier MCAI–2026–00384–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 18, 2026.

(b) Affected ADs

(1) This AD replaces AD 2024–17–03, Amendment 39–22828 (89 FR 79416, September 30, 2024) (AD 2024–17–03).

(2) This AD affects AD 2025–14–05, Amendment 39–23083 (90 FR 34168, July 21, 2025) (AD 2025–14–05).

(c) Applicability

This AD applies to all Embraer S.A. (Type Certificate previously held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Model ERJ 190–100 STD, –100 LR, –100 IGW, –100 ECJ, and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address failure of certain system components. The unsafe condition, if not addressed, could result in reduced structural integrity and system reliability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Revision of the Existing Maintenance or Inspection Program, With a New Terminating Action for Certain Limitations

This paragraph restates the requirement of paragraph (i) of AD 2024–17–03, with a new termination action for certain limitations. For airplanes identified in Agência Nacional de Aviação Civil (ANAC) AD 2023–12–02, effective December 15, 2023 (ANAC AD 2023–12–02): Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2023–12–02. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (i) of this AD for Part 2, Airworthiness Limitation Inspections—Structures, and Part 4, Life Limited Items, terminates the corresponding Part 2 and Part 4 limitations required by this paragraph only.

(h) Retained Exceptions to ANAC AD 2023–12–02, With No Changes

This paragraph restates paragraph (j) of AD 2024–17–03, with no changes.

(1) Where ANAC AD 2023–12–02 refers to its effective date, this AD requires using November 4, 2024 (the effective date of FAA AD 2024–17–03).

(2) This AD does not adopt paragraph (d) of ANAC AD 2023–12–02.

(3) Where paragraph (c) of ANAC AD 2023–12–02 refers to ''alternative inspections or inspection intervals,'' for this AD, replace that text with ''alternative actions (*e.g.,* inspections), intervals, and CDCCLs.''

(i) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Agência Nacional de Aviação Civil (ANAC) AD 2026–04–01, effective April 13, 2026 (ANAC AD 2026–04–01). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph for Part 2, Airworthiness Limitation Inspections—Structures, and Part 4, Life Limited Items, terminates the corresponding Part 2 and Part 4 limitations requirements of paragraph (g) of this AD only.

(j) Exceptions to ANAC AD 2026–04–01

(1) This AD does not adopt paragraph (b) of ANAC AD 2026–04–01.

(2) Where paragraph (c) of ANAC AD 2026–04–01 refers to its effective date, this

AD requires using the effective date of this AD.

(3) Where paragraph (d) of ANAC AD 2026–04–01 refers to ''alternative inspections or inspection intervals'', for this AD, replace that text with ''alternative actions (*e.g.,* inspections), intervals, and CDCCLs''.

(4) Where paragraph (d) of ANAC AD 2026–04–01 refers to ''alternative inspection or interval'', for this AD, replace that text with ''alternative action, interval, or CDCCL''.

(5) This AD does not adopt paragraph (e) of ANAC AD 2026–04–01.

(k) Terminating Action for AD 2025–14–05

Accomplishing the revision of the existing maintenance or inspection program required by paragraph (i) of this AD terminates all requirements of AD 2025–14–05 for Model ERJ 190–100 STD, –100 LR, –100 IGW, –100 ECJ, and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes only.

(l) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (m) of this AD and email to: *AMOC@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, AIR–520, Continued Operational Safety Branch, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(m) Additional Information

For more information about this AD, contact Taylor Stanley, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 407–852–7677; email: *Taylor.Stanley@faa.gov.*

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following material was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) Agência Nacional de Aviação Civil (ANAC) AD 2026–04–01, effective April 13, 2026.

(ii) [Reserved]

(4) The following material was approved for IBR on November 4, 2024 (89 FR 79416, September 30, 2024).

(i) ANAC AD 2023–12–02, effective December 15, 2023.

(ii) [Reserved]

(5) For ANAC material identified in this AD, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br.* You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

(6) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(7) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*.

Issued on October 29, 2026.

Brian Knaup,

Acting Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2026–22382 Filed 11–2–26; 8:45 am]

BILLING CODE 4910–13–P

Notices

Federal Register
Vol. 91, No. 211
Tuesday, November 3, 2026

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Administration

[FNA–2026–XXXXX]

Supplemental Nutrition Assistance Program: State of Montana SNAP Demonstration Project

AGENCY: Food and Nutrition Administration, U.S. Department of Agriculture.

ACTION: Notice of approval to implement Supplemental Nutrition Assistance Program demonstration project.

SUMMARY: On September 15, 2026, the Food and Nutrition Administration (FNA) posted **Federal Register** Number 2026–18892, which invited public comment on the State of Montana's Supplemental Nutrition Assistance Program (SNAP) demonstration project authorized under section 17(b) of the Food and Nutrition Act of 2008. The comment period closed October 15, 2026. FNA has considered all comments received and is announcing its decision to proceed with approval of Montana's request to implement its SNAP demonstration project.

DATES: The project is effective November 1, 2026.

FOR FURTHER INFORMATION CONTACT: Shiela Corley, Acting FNA Administrator, at *SM.FN.RPMDHQ-WEB@usda.gov* with subject line of ''MT SNAP Demonstration Project''.

SUPPLEMENTARY INFORMATION: Section 17(b) of the Food and Nutrition Act of 2008, 7 U.S.C. 2026(b), authorizes FNA to approve demonstration projects to test changes to the Supplemental Nutrition Assistance Program (SNAP) that may increase programmatic efficiency and improve the delivery of SNAP benefits to raise levels of nutrition among eligible households. This demonstration project is implemented by the State, and FNA will carefully review the results of the project based on the State's evaluation data. All relevant documents, including the State's demonstration project request(s) and FNA approval(s), can be found in the supporting document section. Additionally, to support implementation and ensure transparency, FNA created a central web page on May 21, 2025, to post State agencies' project requests and approvals and provide exact implementation timelines. That web page is accessible at the following address: *https://www.fna.usda.gov/snap/waivers/foodrestriction.*

Discussion of Demonstration Project

State of Montana Demonstration Project Request

The State of Montana requested to conduct a demonstration project to amend the SNAP definition of food for purchase to exclude ''high-sugar beverages, energy drinks, candy, and prepared desserts.'' The State formally requested to conduct this project on or about March 31, 2026. The State requested to implement the project on September 30, 2026. Subsequently, in consultation with FNA, the State revised its planned implementation date to November 1, 2026. The State's project request can be found in the supporting document section and on the FNA website at the following address: *https://www.fna.usda.gov/snap/waivers/foodrestriction/montana.*

Discussion of Public Comments

FNA received 29 comments on Montana's demonstration project request. Most commenters opposed the project, citing concerns about potential health and nutrition impacts, limits on participant choice, added burden on SNAP households, retailer and consumer confusion, and the project's evaluation measures. Supporters stated that the project advances SNAP's nutrition objectives, could improve public health outcomes, and would promote responsible use of taxpayer-funded benefits.

FNA carefully considered all comments and determined that none of the comments received were significant. FNA has decided to allow Montana's project to proceed without modification, effective November 1, 2026. SNAP's statutory purpose is to improve nutrition among low-income households, and FNA believes the project is consistent with that purpose and represents an appropriate policy intervention to address diet-related disease and obesity. FNA has monitored the State's efforts to prepare retailers and provide notice to SNAP households. FNA also notes that SNAP benefits are supplemental and do not restrict participants from purchasing excluded items with non-SNAP funds. FNA has determined that approval is authorized under section 17(b) of the Food and Nutrition Act of 2008 and that Montana is prepared to implement the project successfully.

Shiela Corley,

Acting Administrator, Food and Nutrition Administration, USDA.

[FR Doc. 2026–22389 Filed 11–2–26; 8:45 am]

BILLING CODE 4310–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Administration

[FNA–2026–XXXXX]

Supplemental Nutrition Assistance Program: State of South Carolina SNAP Demonstration Project

AGENCY: Food and Nutrition Administration, U.S. Department of Agriculture.

ACTION: Notice of approval to implement Supplemental Nutrition Assistance Program demonstration project.

SUMMARY: On September 15, 2026, the Food and Nutrition Administration (FNA) posted **Federal Register** Number 2026–18896, which invited public comment on the State of South Carolina's Supplemental Nutrition Assistance Program (SNAP) demonstration project authorized under section 17(b) of the Food and Nutrition Act of 2008. The comment period closed October 15, 2026. FNA has considered all comments received and is announcing its decision to proceed with approval of South Carolina's request to implement its SNAP demonstration project.

DATES: The project is effective November 1, 2026.

FOR FURTHER INFORMATION CONTACT: Shiela Corley, Acting FNA Administrator, at *SM.FN.RPMDHQ-WEB@usda.gov* with subject line of ''SC SNAP Demonstration Project''.

SUPPLEMENTARY INFORMATION: Section 17(b) of the Food and Nutrition Act of 2008, 7 U.S.C. 2026(b), authorizes FNA to approve demonstration projects to test changes to the Supplemental Nutrition Assistance Program (SNAP) that may increase programmatic efficiency and improve the delivery of SNAP benefits to raise levels of nutrition among eligible households. This demonstration project is implemented by the State, and FNA will carefully review the results of the project based on the State's evaluation data. All relevant documents, including the State's demonstration project request(s) and FNA approval(s), can be found in the supporting document section. Additionally, to support implementation and ensure transparency, FNA created a central web page on May 21, 2025, to post State agencies' project requests and approvals and provide exact implementation timelines. That web page is accessible at the following address: *https://www.fna.usda.gov/snap/waivers/foodrestriction.*

Discussion of Demonstration Project

State of South Carolina Demonstration Project Request

The State of South Carolina requested to conduct a demonstration project to amend the SNAP definition of food for purchase to exclude ''candy, energy drinks, soft drinks, and sweetened beverages.'' The State formally requested to conduct this project on September 23, 2025. On July 23, 2026, the State requested to modify the initial project request to further amend the definition of ''soft drink''. The State requested to implement the project on August 31, 2026. Subsequently, in consultation with FNA, the State revised its planned implementation date to November 1, 2026. The State's project request and the subsequent modification request can be found in the supporting document section and on the FNA website at the following address: *https://www.fna.usda.gov/snap/waivers/foodrestriction/southcarolina.*

USDA Approval of Initial Demonstration Project Request

FNA approved the State's initial demonstration project request on December 10, 2025. The approval can be found in the supporting document section and at the following address: *https://www.fna.usda.gov/snap/waivers/foodrestriction/southcarolina.*

Discussion of Public Comments

FNA received 47 comments on South Carolina's demonstration project request. Most commenters opposed the project, citing concerns about potential health and nutrition impacts, limits on participant choice, added burden on SNAP households, retailer and consumer confusion, and the project's evaluation measures. Supporters stated that the project advances SNAP's nutrition objectives, could improve public health outcomes, and would promote responsible use of taxpayer-funded benefits.

FNA carefully considered all comments and determined that none of the comments received were significant. FNA has decided to allow South Carolina's revised project request to proceed without modification, effective November 1, 2026. SNAP's statutory purpose is to improve nutrition among low-income households, and FNA believes the project is consistent with that purpose and represents an appropriate policy intervention to address diet-related disease and obesity. FNA has monitored the State's efforts to prepare retailers and provide notice to SNAP households. FNA also notes that SNAP benefits are supplemental and do not restrict participants from purchasing excluded items with non-SNAP funds. FNA has determined that approval is authorized under section 17(b) of the Food and Nutrition Act of 2008 and that South Carolina is prepared to implement the project successfully.

Shiela Corley,

Acting Administrator, Food and Nutrition Administration, USDA.

[FR Doc. 2026–22387 Filed 11–2–26; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Administration

[FNA–2026–XXXXX]

Supplemental Nutrition Assistance Program: State of North Dakota SNAP Demonstration Project

AGENCY: Food and Nutrition Administration, U.S. Department of Agriculture.

ACTION: Notice of approval to implement Supplemental Nutrition Assistance Program demonstration project.

SUMMARY: On September 15, 2026, the Food and Nutrition Administration (FNA) posted **Federal Register** Number 2026–18879, which invited public comment on the State of North Dakota's Supplemental Nutrition Assistance Program (SNAP) demonstration project authorized under section 17(b) of the Food and Nutrition Act of 2008. The comment period closed October 15, 2026. FNA has considered all comments received and is announcing its decision to proceed with approval of North Dakota's request to implement its SNAP demonstration project.

DATES: The project is effective November 1, 2026.

FOR FURTHER INFORMATION CONTACT: Shiela Corley, Acting FNA Administrator, at *SM.FN.RPMDHQ-WEB@usda.gov* with subject line of ''ND SNAP Demonstration Project''.

SUPPLEMENTARY INFORMATION: Section 17(b) of the Food and Nutrition Act of 2008, 7 U.S.C. 2026(b), authorizes FNA to approve demonstration projects to test changes to the Supplemental Nutrition Assistance Program (SNAP) that may increase programmatic efficiency and improve the delivery of SNAP benefits to raise levels of nutrition among eligible households. This demonstration project is implemented by the State, and FNA will carefully review the results of the project based on the State's evaluation data. All relevant documents, including the State's demonstration project request(s) and FNA approval(s), can be found in the supporting document section. Additionally, to support implementation and ensure transparency, FNA created a central web page on May 21, 2025, to post State agencies' project requests and approvals and provide exact implementation timelines. That web page is accessible at the following address: *https://www.fna.usda.gov/snap/waivers/foodrestriction.*

Discussion of Demonstration Project

State of North Dakota Demonstration Project Request

The State of North Dakota requested to conduct a demonstration project to amend the SNAP definition of food for purchase to exclude ''soft drinks'', ''energy drinks'', and ''candy''. The State formally requested to conduct this project on October 24, 2025, and then provided a revised request on November 3, 2025. On February 27, 2026, the State requested to modify the initial project request to ''further explain the state's restricted food and beverage items''. The State requested to implement the project on September 1, 2026. Subsequently, in consultation with FNA, the State revised its planned implementation date to November 1, 2026. The State's project request and the subsequent modification request can be found in the supporting document section and on the FNA website at the following address: *https://www.fna.usda.gov/snap/waivers/foodrestriction/northdakota.*

USDA Approval of Initial Demonstration Project Request

FNA approved the State's initial demonstration project request on December 10, 2025. The approval can be found in the supporting document section and at the following address: *https://www.fna.usda.gov/snap/waivers/foodrestriction/northdakota.*

Discussion of Public Comments

FNA received 65 comments on North Dakota's demonstration project request. Most commenters opposed the project, citing concerns about potential health and nutrition impacts, limits on participant choice, added burden on SNAP households, retailer and consumer confusion, and the project's evaluation measures. Supporters stated that the project advances SNAP's nutrition objectives, could improve public health outcomes, and would promote responsible use of taxpayer-funded benefits.

FNA carefully considered all comments and determined that none of the comments received were significant. FNA has decided to allow North Dakota's revised project request to proceed without modification, effective November 1, 2026. SNAP's statutory purpose is to improve nutrition among low-income households, and FNA believes the project is consistent with that purpose and represents an appropriate policy intervention to address diet-related disease and obesity. FNA has monitored the State's efforts to prepare retailers and provide notice to SNAP households. FNA also notes that SNAP benefits are supplemental and do not restrict participants from purchasing excluded items with non-SNAP funds. FNA has determined that approval is authorized under section 17(b) of the Food and Nutrition Act of 2008 and that North Dakota is prepared to implement the project successfully.

Shiela Corley,

Acting Administrator, Food and Nutrition Administration, USDA.

[FR Doc. 2026–22388 Filed 11–2–26; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Administration

[FNA–2026–XXXXX]

Supplemental Nutrition Assistance Program: State of Virginia SNAP Demonstration Project

AGENCY: Food and Nutrition Administration, U.S. Department of Agriculture.

ACTION: Notice of approval to implement Supplemental Nutrition Assistance Program demonstration project.

SUMMARY: On September 15, 2026, the Food and Nutrition Administration (FNA) posted **Federal Register** Number 2026–18880, which invited public comment on the State of Virginia's Supplemental Nutrition Assistance Program (SNAP) demonstration project authorized under section 17(b) of the Food and Nutrition Act of 2008. The comment period closed October 15, 2026. FNA has considered all comments received and is announcing its decision to proceed with approval of Virginia's request to implement its SNAP demonstration project.

DATES: The project is effective November 1, 2026.

FOR FURTHER INFORMATION CONTACT: Shiela Corley, Acting FNA Administrator, at *SM.FN.RPMDHQ-WEB@usda.gov* with subject line of ''VA SNAP Demonstration Project''.

SUPPLEMENTARY INFORMATION: Section 17(b) of the Food and Nutrition Act of 2008, 7 U.S.C. 2026(b), authorizes FNA to approve demonstration projects to test changes to the Supplemental Nutrition Assistance Program (SNAP) that may increase programmatic efficiency and improve the delivery of SNAP benefits to raise levels of nutrition among eligible households. This demonstration project is implemented by the State, and FNA will carefully review the results of the project based on the State's evaluation data. All relevant documents, including the State's demonstration project request(s) and FNA approval(s), can be found in the supporting document section. Additionally, to support implementation and ensure transparency, FNA created a central web page on May 21, 2025, to post State agencies' project requests and approvals and provide exact implementation timelines. That web page is accessible at the following address: *https://www.fna.usda.gov/snap/waivers/foodrestriction.*

Discussion of Demonstration Project

State of Virginia Demonstration Project Request

The State of Virginia requested to conduct a demonstration project to amend the SNAP definition of food for purchase to exclude ''sweetened beverages.'' The State formally requested to conduct this project on November 4, 2025. On February 3, 2026, the State requested to modify the initial project request to amend the implementation date to October 1, 2026. Subsequently, in consultation with FNA, the State revised its planned implementation date to November 1, 2026. The State's project request and the subsequent modification request can be found in the supporting document section and on the FNA website at the following address: *https://www.fna.usda.gov/snap/waivers/foodrestriction/virginia.*

USDA Approval of Initial Demonstration Project Request

FNA approved the State's initial demonstration project request on December 10, 2025. The approval can be found in the supporting document section and at the following address: *https://www.fna.usda.gov/snap/waivers/foodrestriction/virginia.*

Discussion of Public Comments

FNA received 30 comments on Virginia's demonstration project request. Most commenters opposed the project, citing concerns about potential health and nutrition impacts, limits on participant choice, added burden on SNAP households, retailer and consumer confusion, and the project's evaluation measures. Supporters stated that the project advances SNAP's nutrition objectives, could improve public health outcomes, and would promote responsible use of taxpayer-funded benefits.

FNA carefully considered all comments and determined that none of the comments received were significant. FNA has decided to allow Virginia's revised project request to proceed without modification, effective November 1, 2026. SNAP's statutory purpose is to improve nutrition among low-income households, and FNA believes the project is consistent with that purpose and represents an appropriate policy intervention to address diet-related disease and obesity. FNA has supported the State in its efforts to prepare retailers and provide notice to SNAP households. FNA also notes that SNAP benefits are supplemental and do not restrict participants from purchasing excluded items with non-SNAP funds. FNA has determined that approval is authorized under section 17(b) of the Food and Nutrition Act of 2008 and that Virginia is prepared to implement the project successfully.

Shiela Corley,

Acting Administrator, Food and Nutrition Administration, USDA.

[FR Doc. 2026–22390 Filed 11–2–26; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–20–2026]

Foreign-Trade Zone (FTZ) 93; Authorization of Limited Production Activity; Alder SOL Holdings LLC dba StayOnline; (Power Cords); Henderson, North Carolina

On February 12, 2026, Alder SOL Holdings LLC dba StayOnline submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 93, in Henderson, North Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (91 FR 8820, February 24, 2026). On October 29, 2026, the applicant was notified of the FTZ Board's decision that further review of part of the proposed activity is warranted. The FTZ Board authorized the production activity described in the notification on a limited basis, subject to the FTZ Act and the Board's regulations, including section 400.14, and further subject to a one-year time limitation on the use of vinyl chloride polymer molding resin as a foreign status component.

Dated: October 29, 2026.

Colin Agostisi,

Executive Secretary.

[FR Doc. 2026–22430 Filed 11–2–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–479–2026]

Foreign-Trade Zone 168; Application for Subzone; Samsung Electro-Mechanics America, Inc.; Wilmer, Texas

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Metroplex International Trade Development Corporation, grantee of FTZ 168, requesting subzone status for the facility of Samsung Electro-Mechanics America, Inc., located in Wilmer, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on October 28, 2026.

The proposed subzone (0.69 acres) is located at 1200 Fulghum Road, Wilmer, Texas. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 168.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is December 14, 2026. Rebuttal comments in response to material submitted during the foregoing period may be submitted through December 28, 2026.

A copy of the application will be available for public inspection in the ''Online FTZ Information System'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov.*

Dated: October 29, 2026.

Colin Agostisi,

Executive Secretary.

[FR Doc. 2026–22434 Filed 11–2–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–286–2026]

Foreign-Trade Zone 266; Approval of Subzone Status; Tekni-Plex Flexibles LLC (dba TekniPlex Healthcare); Madison, Wisconsin

On June 1, 2026, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by Dane County, Wisconsin, grantee of FTZ 266, requesting subzone status subject to the existing activation limit of FTZ 266, on behalf of Tekni-Plex Flexibles LLC (dba TekniPlex Healthcare), in Madison, Wisconsin.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (91 FR 33139, June 3, 2026). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 266C was approved on October 29, 2026, subject to the FTZ Act and the Board's regulations, including section 400.13, and further subject to FTZ 266's 648-acre activation limit.

Dated: October 29, 2026.

Colin Agostisi,

Executive Secretary.

[FR Doc. 2026–22432 Filed 11–2–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–252–2026]

Foreign-Trade Zone 102; Approval of Subzone Status; BASF Agricultural Solutions US LLC; Fenton and Palmyra, Missouri

On May 11, 2026, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the St. Louis County Port Authority, grantee of FTZ 102, requesting subzone status subject to the existing activation limit of FTZ 102, on behalf of BASF Agricultural Solutions US LLC, in Fenton and Palmyra, Missouri.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (91 FR 27243, May 14, 2026). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 102I was approved on October 29, 2026, subject to the FTZ Act and the Board's regulations, including section 400.13, and further subject to FTZ 102's 2,000-acre activation limit.

Dated: October 29, 2026.

Colin Agostisi,

Executive Secretary.

[FR Doc. 2026–22426 Filed 11–2–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–18–2026]

Foreign-Trade Zone (FTZ) 22; Authorization of Production AFC Specialty Coatings Group, LLC; (Polymer or Silicone Coated Fabrics); Lake in the Hills, Illinois

On February 10, 2026, the Illinois International Port District, grantee of FTZ 22, submitted a notification of proposed production activity to the FTZ

Board on behalf of AFC Specialty Coatings Group, LLC, within FTZ 22, in Lake in the Hills, Illinois.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (91 FR 724, February 17, 2026). On October 29, 2026, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: October 29, 2026.

Colin Agostisi,

Executive Secretary.

[FR Doc. 2026–22429 Filed 11–2–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–714–001]

Phosphate Fertilizers From the Kingdom of Morocco: Final Results of First Full Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on phosphate fertilizers (fertilizers) from the Kingdom of Morocco (Morocco) would likely to lead to the continuation or recurrence of a countervailable subsidy at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable November 3, 2026.

FOR FURTHER INFORMATION CONTACT: Faris Montgomery, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1537.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2021, Commerce published a CVD order on fertilizers from Morocco.[1] On March 2, 2026, Commerce published the notice of initiation of the first sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(c).[2] On the basis of notices of intent to participate and adequate substantive responses filed by domestic interested parties, and adequate responses from the Government of Morocco (GOM) and respondent OCP S.A. (OCP), Commerce determined to conduct a full sunset review of this CVD order, pursuant to section 751(c) of the Act and 19 CFR 351.218(e)(2).[3] On July 24, 2026, Commerce preliminarily determined that revocation of the CVD order on phosphate fertilizers from Morocco would likely lead to continuation or recurrence of subsidization.[4] On August 24, 2026, the GOM and OCP filed case briefs in response to the *Preliminary Results*.[5] On August 31, 2026, Commerce received rebuttal briefs from domestic interested parties, the Mosaic Company (Mosaic) and J.R. Simplot Company, LLC (Simplot).[6]

Scope of the Order

The product covered by the *Order* is fertilizers from Morocco. For a full description of the scope, *see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/frnotices.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to the continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

Producer/exporter	Subsidy rate (percent *ad valorem*)
OCP S.A	20.04
All Others	20.04

Notification Regarding Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective orders, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

Dated: October 28, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

List of Issues Addressed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
Comment 1: Whether Programs Previously Found to be Countervailable Have Undergone Substantial Changes Affecting the Net Countervailable Subsidies
Comment 2: Whether Commerce Incorrectly Found that the Government Loan Guarantees are Likely to Continue or Recur
Comment 3: Whether Commerce Incorrectly Relied on a Rate Applied Using Adverse Facts Available (AFA) to Support a Finding that OCP, S.A.'s (OCP) Payroll Tax Refund is Likely to Continue or Recur

[1] *See Phosphate Fertilizers from the Kingdom of Morocco and the Russian Federation: Countervailing Duty Orders,* 86 FR 18037 (April 7, 2021) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 91 FR 10053 (March 2, 2026).

[3] *See Phosphate Fertilizers from the Kingdom of Morocco: Preliminary Results of First Full Sunset Review of the Countervailing Duty Order,* 91 FR 46772 (July 24, 2026) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[4] *Id.*

[5] *See* GOM's Letter, ''Case Brief of the Government of the Kingdom of Morocco,'' dated August 24, 2026; *see also* OCP's Letter, ''OCP S.A. Case Brief,'' dated August 24, 2026.

[6] *See* Mosaic's Letter, ''Petitioner's Rebuttal Brief,'' dated August 31, 2026; and Simplot's Letter, ''Simplot's Rebuttal Brief,'' dated August 31, 2026.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the First Full Sunset Review of the Countervailing Duty Order on Phosphate Fertilizers from the Kingdom of Morocco,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Comment 4: Whether Commerce Correctly Incorporated Judicial Decisions in Its Findings
2. Net Countervailable Subsidy Likely to Prevail
Comment 5: Whether Commerce Properly Calculated the Net Subsidy Rate Likely to Prevail in the Event of Revocation
3. Nature of the Subsidies
VII. Final Results of Review
VIII. Recommendation

[FR Doc. 2026–22435 Filed 11–2–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–858]

Certain Softwood Lumber Products From Canada: Notice of NAFTA Panel Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 19, 2026, the North American Free Trade Agreement (NAFTA) Secretariat issued a Notice of Final Panel Action. The U.S. Department of Commerce (Commerce) is notifying the public that the NAFTA Binational Panel's final judgment is not in harmony with Commerce's final determination in the countervailing duty (CVD) investigation of certain softwood lumber products (lumber) from Canada, and that Commerce is amending the final determination and the resulting CVD order with respect to the countervailable subsidy rate assigned to Canfor Corporation (Canfor); J.D. Irving, Limited (J.D. Irving); Resolute FP Canada Inc. (Resolute); Tolko Marketing and Sales Ltd. (Tolko); West Fraser Mills Ltd. (West Fraser); and all other companies.

DATES: Applicable October 29, 2026.

FOR FURTHER INFORMATION CONTACT: Samuel Brummitt, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7851.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 2017, Commerce published its *Final Determination* in the CVD investigation of lumber from Canada.[1] The *Final Determination* was subsequently amended.[2] Respondent parties subsequently challenged Commerce's final determination before the NAFTA Binational Panel, pursuant to Article 1904 of NAFTA. The parties briefed and argued the case before the Panel and, on March 6, 2024, the Panel issued its decision, affirming in part and remanding in part Commerce's determination.[3] On December 17, 2024, Commerce issued its *First Remand Determination*.[4] On March 6, 2026, the Panel issued its decision on remand, affirming in part and remanding in part Commerce's *First Remand Determination*.[5] On June 17, 2026, Commerce issued its *Second Remand Determination*.[6] By decision on October 5, 2026, the NAFTA Panel affirmed Commerce's *Second Remand Determination*.[7] On October 19, 2026, the Panel directed the NAFTA Secretariat to issue a Notice of Final Panel Action; the NAFTA Secretariat subsequently issued the Notice of Final Panel Action on October 19, 2026.

Timken Notice

In its decision in *Timken,*[8] as clarified by *Diamond Sawblades,*[9] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. Because NAFTA panels step into the shoes of the courts they are replacing, they must apply the law of the national court that would otherwise review the administrative determination. Therefore, we are publishing notice that the NAFTA Panel's Panel Decision on Second Remand, as memorialized by the NAFTA Secretariat's October 19, 2026, Notice of Final Panel Action, is ''not in harmony'' with the *Final Determination*.[10] Publication of this notice fulfills the obligation imposed upon Commerce by the decision in *Timken.*

Amended Final Determination

Having received a Notice of Final Panel Action from the NAFTA Secretariat, Commerce is amending its *Final Determination* with respect to Canfor, J.D. Irving, Resolute, Tolko, West Fraser, and all other producers and exporters as follows:

Company	Original *final determination* subsidy rate (percent)	Subsidy rate post- notice of final action (percent)
Canfor Corporation and its cross-owned affiliates[11]	13.24	12.49
J.D. Irving Limited and its cross-owned affiliates[12]	3.34	2.96
Resolute FP Canada Inc. and its cross-owned affiliates[13]	14.70	13.90
Tolko Marketing and Sales Ltd. and its cross-owned affiliates[14]	14.85	11.01
West Fraser Mills Ltd. and its cross-owned affiliates[15]	17.99	16.73
All Others	14.19	12.80

[1] *See Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination and Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances,* 82 FR 51814 (November 8, 2017) (*Final Determination*).

[2] *See Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 83 FR 347 (January 3, 2018) (*Amended Final Determination*).

[3] *See Decision of the Panel, In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination, Secretariat File No. USA–CDA–2017–1904–02 NAFTA Binational Panel Review,* dated May 6, 2024.

[4] *See Certain Softwood Lumber Products from Canada: Final Results of Redetermination Pursuant to Binational Panel Order, Secretariat File No. USA–CDA–2017–1904–02,* dated December 17, 2024 (*First Remand Redetermination*).

[5] *See Decision of the Panel, In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination, Secretariat File No. USA–CDA–2017–1904–02 NAFTA Binational Panel Review,* dated March 6, 2026 (Panel Decision on Second Remand).

[6] *See Final Results of Redetermination Pursuant to Second Binational Panel Order In the Matter of Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination,* Secretariat File No. USA–CDA–2017–1904–02 (*Second Remand Determination*).

[7] *See* Decision of the Panel on Second Remand Determination, *In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination,* Secretariat File No. USA–CDA–2017–1904–02 NAFTA Binational Panel Review.

[8] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[9] See *Diamond Sawblades Manufacturers Coalition* v. *United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[10] *See* Notice of Final Panel Action, dated October 19, 2026.

Cash Deposit Requirements

Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). Because Canfor J.D. Irving, Resolute, Tolko, and West Fraser have superseding cash deposit rates, *i.e.,* there have been final results published in a subsequent administrative review, this notice will not affect the current cash deposit rate for Canfor J.D. Irving, Resolute, Tolko, and West Fraser. For all other companies that do not have a superseding cash deposit rate, Commerce will issue revised cash deposit instructions to CBP.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: October 28, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2026–22431 Filed 11–2–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XG172]

Greater Atlantic Regional Fisheries Office; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings and comment period.

SUMMARY: NMFS will hold five public hearings in November and December 2026 to solicit input on a potential Secretarial amendment to the Atlantic Sea Scallop Fishery Management Plan. If the Secretary of Commerce determines that such an amendment is warranted, the action would consider allowing permit stacking in the limited access scallop fleet. NMFS is soliciting written scoping comments on this topic.

DATES: Public hearing will be held in November and December 2026. Comments are due on January 4, 2027. See **SUPPLEMENTARY INFORMATION** for specific hearing dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for hearing addresses.

You may submit comments on this document, identified by NOAA–NMFS–2026–3136, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit *https://www.regulations.gov* and type NOAA–NMFS–2026–3136 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Emily Keiley, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Emily Keiley, 978–281–9116, *emily.keiley@noaa.gov.*

SUPPLEMENTARY INFORMATION: Hearing Locations—NMFS will hold two online webinars and three in-person public hearings:

1. *Tuesday, November 17, 2026, 4 p.m. to 6 p.m.;* Hilton Garden Inn Boston Logan Airport, 100 Boardman St., Boston, MA 02128; phone (617) 567–6789. Note: The Scoping Meeting will begin 30 minutes after the conclusion of the Joint Scallop Committee and Advisory Panel Meeting.

2. *Monday, November 23, 2026, 11 a.m. to 1 p.m.;* This meeting will be conducted via webinar accessible via the internet from *https://noaanmfs-meets.webex.com/noaanmfs-meets/j.php?MTID=medf57ebff82a5b2f8eba37822902afaf.*

3. *Thursday, December 3, 2026, 4 p.m. to 6 p.m.;* Barnegat Light Volunteer Fire Department, 907 Central Ave., Barnegat Light, NJ 08006; phone (609) 494–1280.

4. *Monday, December 7, 2026, 6 p.m. to 8 p.m.;* This meeting will be conducted via webinar accessible via the internet from *https://noaanmfs-meets.webex.com/noaanmfs-meets/j.php?MTID=mb0a2a4828a3a66f98fecf5e467c73a44.*

5. *Monday, December 14, 2026, 1 p.m. to 3 p.m.;* University of Massachusetts Dartmouth School for Marine Science and Technology East, 836 South Rodney French Blvd., New Bedford, MA 02744; phone: (508) 999–8193.

Background

Based on comments received in response to Executive Order 14276, the Secretary of Commerce is considering whether to develop an amendment to the Atlantic Scallop Fishery Management Plan (FMP) to allow permit stacking in the limited access scallop fishery. The publication of this **Federal Register** notice does not commit the Secretary to take action at this time, but is intended to notify the public of the opportunity to be heard and that NMFS, on behalf of the Secretary, is soliciting feedback to inform the Secretary's decision whether to develop an amendment for permit stacking.

The New England Fishery Management Council (Council) established the Limited Access component of the sea scallop fishery through Amendment 4 (1994) to the Atlantic Sea Scallop FMP. This action was part of an effort control program designed to reduce fishing mortality and rebuild the scallop resource in what was, at that time, an overfished stock. Amendment 4 included measures designed to limit increases in a vessel's fishing power and reduce fishing pressure, such as limiting fishing time through days-at-sea (DAS) management, crew restrictions, gear restrictions, reporting requirements, and vessel upgrade restrictions.

Excess capacity remains in the limited access scallop fishery; that is, the capacity of individual vessels and the fleet as a whole is greater than what is needed to efficiently harvest sustainable levels of catch. Since the limited access program was implemented in 1994, the annual allocation of DAS has reduced steadily. Due to effort reductions in Amendment 4 (1994) and Amendment 7 (1999), DAS allocations were reduced almost by half from 204 DAS in 1994 to 120 DAS in 1999. Since 1999, the number of open area DAS has continued

[11] Commerce has found the following companies to be cross-owned with Canfor: Canadian Forest Products, Ltd., and Canfor Wood Products Marketing, Ltd.

[12] Commerce has found the following companies to be cross-owned with J.D. Irving: Miramichi Timber Holdings Limited, The New Brunswick Railway Company, Rothesay Paper Holdings Ltd., St. George Pulp & Paper Limited, and Irving Paper Limited.

[13] Commerce has found the following companies to be cross-owned with Resolute: Resolute Growth Canada Inc., Resolute Sales Inc., Abitibi-Bowater Canada Inc., Bowater Canadian Ltd., Resolute Forest Products Inc., Produits Forestiers Maurice SEC., and 9192–8515 Quebec Inc.

[14] Commerce has found the following companies to be cross-owned with Tolko: Tolko Industries Ltd., and Meadow Lake OSB Limited Partnership.

[15] Commerce has found the following companies to be cross-owned with West Fraser: West Fraser Timber Co. Ltd., West Fraser Alberta Holdings, Ltd., Blue Ridge Lumber Inc., Manning Forest Products, Ltd., Sunpine Inc., and Sundre Forest Products Inc.

to decline, although more effort has been allocated to fish in access areas, which served to offset that reduction. In fishing year 2026, a full-time vessel was allocated 36 open area DAS and no access area trips.

Some members of the industry have commented that the current low allocations, paired with increasing costs, are reducing profits and suggesting the reconsideration of certain management approaches may be timely. Some crews routinely work on multiple vessels in one fishing year. Further, reports suggest that some ports are congested with vessels tied to the dock for the majority of the year causing safety and space issues.

The Secretary is considering addressing excess capacity in the limited access scallop fishing by allowing up to two limited access scallop permits to be combined on a single vessel. The vessel would be permitted to fish the allocations for both permits, which would reduce business expenses associated with maintaining multiple vessels with low DAS allocations.

To mitigate risks of fleet consolidation, job loss, and effort spillover into other fisheries, any potential Secretarial amendment under consideration would evaluate specific protective management measures, including but not limited to:

- Limiting stacked permits to those within the same Limited Access category (*i.e.,* full-time, part-time, occasional);
- Requiring stacking to be a one-time, permanent, and irreversible action (*i.e.,* prohibiting de-stacking);
- Whether to restrict permit stacking to strictly respect existing vessel length, tonnage, and horsepower baseline restrictions (*i.e.,* disallowing a permit carrying a smaller baseline specification to stack onto a vessel with larger baselines and to ensure stacking is not used to bypass vessel replacement limits);
- Narrowing allowable permit stacking exclusively to vessels under common ownership or common control in order to avoid fleet concentration and accommodate the needs of active owner-operators; and
- Maintaining the ownership cap of no more than 5 percent of the total number of limited access permits.

NMFS is seeking public input on all aspects of a potential action to allow permit stacking. Additional details are available in the public hearing document, available at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/commercial-fishing/scoping-potential-secretarial-action-implement-permit.*

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Emily Keiley, (978) 281–9116 at least 5 days prior to any meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 30, 2026.

Kelly Denit,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2026–22425 Filed 11–2–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XG146]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public hybrid meeting of its Scallop Joint Committee and Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, November 17, 2026 at 9 a.m. Eastern Standard Time.

Webinar registration URL information: *https://nefmc-org.zoom.us/meeting/register/jYhFeiQ1QfmoYpDvwU9Eqg.*

ADDRESSES: This meeting will be held at Hilton Garden Inn Boston Logan, 100 Boardman Street, Boston, MA 02740; Phone (617) 567–6789.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Committee and Advisory Panel will meet to discuss 2027 Specifications: Review specifications alternatives and select final preferred alternatives. This action will set specifications for fishing year 2027 and fishing year 2028 (default) including the overfishing limit, acceptable biological catch/annual catch limit, days-at-sea, access area allocations for Limited Access vessels, quota and access area trip allocation to the Limited Access General Category (LAGC) Individual Fishing Quota component, Total Allowable Landings for the Northern Gulf of Maine management area, a target-Total Allowable Catch for LAGC incidental catch and set-asides for the observer and research programs. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 30, 2026.

Anna Michelle Harrison,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2026–22416 Filed 11–2–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of the Record of Decision for the Final Supplemental Environmental Impact Statement for the Mississippi River, Baton Rouge to the Gulf of Mexico, Mississippi River-Gulf Outlet, Louisiana, New Industrial Canal Lock and Connecting Channels Proposed Project, Orleans Parish, Louisiana

AGENCY: U.S. Army Corps of Engineers, Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (USACE) announces the availability of the Record of Decision (ROD) for the final Supplemental Environmental Impact Statement (SEIS) for the Mississippi River, Baton Rouge to the Gulf of Mexico, Mississippi River-Gulf Outlet, Louisiana, New Industrial Canal Lock and Connecting Channels Proposed Project, Orleans Parish, Louisiana. The Assistant Secretary of the Army (Civil Works) (ASA(CW)) signed the ROD on August 27, 2026.

ADDRESSES: U.S. Army Corps of Engineers, New Orleans; 7400 Leake Ave., New Orleans, Louisiana 70118.

FOR FURTHER INFORMATION CONTACT: Mark Lahare, U.S. Army Corps of Engineers, New Orleans District, at (504) 862–1344 or by email at *Mark.H.Lahare@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The SEIS was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended) (42 U.S.C. 4321, *et seq.*). The NOI for the SEIS was published in the **Federal Register** on January 1, 2015, (80 FR 4911). The ASA(CW) signed a Record of Decision outlining the conclusion of the environmental impacts analysis related to the recommended design and construction of a new navigation lock within the Inner Harbor Navigation Canal (IHNC), between the Claiborne and Florida Avenue Bridges in Orleans Parish, to improve efficient and reliable passage of waterborne traffic locking through the IHNC; reduce the frequency and costs associated with major (*i.e.,* unwatering) operation and maintenance events; and construct a modern navigation lock in the Gulf Intracoastal Waterway (GIWW), IHNC in Orleans Parish, Louisiana. The ROD is available for viewing and download on the USACE New Orleans District study website at: *https://www.mvn.usace.army.mil/about/projects/ihnc-lock-replacement/.* This Notice of Availability is published pursuant to the Department of War NEPA Implementing Procedures (September 3, 2026).

James A. Bodron,

Programs Director, Mississippi Valley Division.

[FR Doc. 2026–22368 Filed 11–2–26; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2026–SCC–2740]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Consolidated Annual Report (CAR) for the Carl D. Perkins Career and Technical Education Act of 2006

AGENCY: Office of Career, Technical, and Adult Education (OCTAE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 3, 2026.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Melissa Hartley, (202) 987–1153.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Consolidated Annual Report (CAR) for the Carl D. Perkins Career and Technical Education Act of 2006.

OMB Control Number: 1830–0569.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 54.

Total Estimated Number of Annual Burden Hours: 12,190.

Abstract: This information collection is used by the Department to request Consolidated Annual Reports (CARs) under the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins V). The Department is making the following revisions to the CAR guide via this action: updating Financial Status Report (FSR) instructions and associated forms to reduce reporting burden on States; updating instructions and Performance Reporting forms to reflect the updated National Career Clusters Framework; and technical and non-substantive updates to improve clarity.

Ross Santy,

Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2026–22437 Filed 11–2–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Petroleum Council Meeting

AGENCY: Office of Hydrocarbons and Geothermal Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Petroleum Council. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, December 7, 2026; 9:00 a.m. to no later than 12:00 p.m. (EST).

ADDRESSES: Willard InterContinental, 1401 Pennsylvania Avenue NW, Washington, DC 20004. In-person

meeting. The live stream link of the meeting proceedings will be available on the Department of Energy website under *December 7, 2026, council meeting: https://www.energy.gov/hgeo/npc-meetings-8.*

FOR FURTHER INFORMATION CONTACT: Paul Bamonte, U.S. Department of Energy, Office of Strategic Resources (EX–30), 1000 Independence Avenue SW, Washington, DC 20585; telephone: (240) 252–8069 or email: *paul.bamonte@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas, and the oil and natural gas industries.

Purpose of the Meeting: The National Petroleum Council will hold a meeting on December 7, 2026, to present and consider for approval the final reports of the Committee on Natural Gas Storage and Produced Water.

Tentative Agenda:

- Call to Order and Introductory Remarks
- Department of Energy Remarks
- Presentations, Discussion, and Consideration of the Final Report of the NPC Produced Water Committee
- Presentations, Discussion, and Consideration of the Final Report of the NPC Natural Gas Storage Committee
- Discussion of Any Other Business Properly Brought Before the National Petroleum Council
- Closing Department of Energy remarks
- Any further discussion brought before the NPC
- Adjournment

Public Participation: The meeting is open to the public and will be convened in-person with a live stream. The Chair of the Council will conduct the meeting to facilitate the orderly conduct of business. Members of the public who wish to listen and/or make oral statements pertaining to agenda items should contact Mr. Paul Bamonte at the address or telephone number listed above. Approximately 15 minutes will be reserved for public comments. The time allocated per speaker will depend on the number of requests received but will not exceed five minutes. Requests to listen to the proceedings and/or make oral statements must be received at least seven days prior to the meeting. Those not able to attend the meeting or having insufficient time to address the Council are invited to send a written statement to *paul.bamonte@hq.doe.gov.* Any member of the public who wishes to file a written statement to the Council will be permitted to do so, either before or after the meeting.

Minutes: A recording of the meeting and the minutes of the meeting will be available at *https://www.energy.gov/hgeo/national-petroleum-council-npc,* or by contacting Mr. Bamonte. He may be reached at the postal address or email address listed previously.

Signing Authority: This document of the Department of Energy was signed on October 30, 2026 by Stephanie Plith, Deputy Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 30, 2026.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2026–22406 Filed 11–2–26; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR27–6–000.
Applicants: Worsham-Steed Gas Storage, LLC.
Description: § 284.123(g) Rate Filing: Updated Statement of Operating Conditions. Pursuant to 284.123(g) to be effective 10/1/2026.
Filed Date: 10/28/26.
Accession Number: 20261028–5079.
Comment Date: 5 p.m. ET 11/18/26.
§ 284.123(g) Protest: 5 p.m. ET 12/28/26.

Docket Numbers: PR27–7–000.
Applicants: Columbia Gas of Ohio, Inc.
Description: § 284.123 Rate Filing: Application to Revise SOC eff. 9–28–2026 to be effective 9/28/2026.
Filed Date: 10/28/26.
Accession Number: 20261028–5145.
Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: RP27–74–000.
Applicants: Southern LNG Company, L.L.C.
Description: § 4(d) Rate Filing: SLNG Electric Power Cost Adjustment—2026 to be effective 12/1/2026.
Filed Date: 10/28/26.
Accession Number: 20261028–5138.
Comment Date: 5 p.m. ET 11/9/26.

Docket Numbers: RP27–75–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Compliance filing: Annual Penalty Sharing Report 2026 to be effective N/A.
Filed Date: 10/29/26.
Accession Number: 20261029–5019.
Comment Date: 5 p.m. ET 11/10/26.

Docket Numbers: RP27–76–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TCO—Various NR Agmts. Eff. 11.1.2026 to be effective 11/1/2026.
Filed Date: 10/29/26.
Accession Number: 20261029–5060.
Comment Date: 5 p.m. ET 11/10/26.

Docket Numbers: RP27–77–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Amended Negotiated Rate Agreements—11/1/2026 to be effective 11/1/2026.
Filed Date: 10/29/26.
Accession Number: 20261029–5120.
Comment Date: 5 p.m. ET 11/10/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Dated: October 29, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–22412 Filed 11–2–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5223–040]

International Falls Power Company; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 5223–040.

c. *Date filed:* November 24, 2025.

d. *Applicant:* International Falls Power Company.

e. *Name of Project:* International Falls Hydroelectric Project (project).

f. *Location:* On the Rainy River, in Koochiching and St. Louis Counties, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Robert Pflederer Assistant Superintendent—Power/Recovery PCA—International Falls, MN 400 2nd Street International Falls, MN 56649; telephone:218–324–3931; or email:*RobertPflederer@packagingcorp.com.*

i. *FERC Contact:* Colleen Corballis, Project Coordinator, Midwest Branch, Division of Hydropower Licensing; telephone at (202) 502–8598; email at *colleen.corballis@ferc.gov.*

j. *Deadline for filing motions to intervene and protests: On or before 5:00 p.m. Eastern Time on December 28, 2026.*

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 10,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy via U.S. Postal Service to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–5223–040.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *The project consists of:* (1) a 48,296.3-acre impoundment (Rainy Lake) having a storage capacity of 1,545,482 acre-feet at elevation 1,108.1 feet mean sea level; (2) a 170-foot-long masonry overflow gravity section; (3) a 215-foot-long powerhouse integral with the dam containing seven turbine-generator units with a total installed capacity of 14.45 megawatts; (4) 6.9-kilovolt generator leads connecting the project to the non-project International Falls Mill; and (5) appurtenant facilities. The project dam spans between the U.S.A. and Canada, but the project boundary only encompasses the U.S.A. side of the dam.

International Falls Power Company proposes to continue to operate the project in accordance with the 2018 rule curve regulating the level of Rainy Lake as prescribed by the International Joint Commission, established by the Boundary Waters Treaty of 1909 between the United States of America (U.S.A) and Canada.

m. A copy of the application may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202)502–6595 or *OPP@ferc.gov*.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

p. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate

Issue Scoping Notice—November 2026.
Request Additional Information (if necessary)—November 2026.
Scoping Comments Due—December 2026.

(Authority: 18 CFR 2.1.)

Dated: October 28, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–22355 Filed 11–2–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26–585–000]

Eastern Shore Natural Gas Company; Notice of Onsite Environmental Review

On November 4 and 5, 2026, the Office of Energy Projects staff will be in Kent County, Delaware; New Castle County, Delaware; Cecil County, Maryland; and Chester County, Pennsylvania to gather data related to the environmental analysis of the proposed DELMAR Regional Enhancement Project (Project). Staff will be conducting an onsite review of proposed project locations to better

understand the potential effects of constructing and operating the Project. This will assist staff in completing its preparation of an environmental document. Viewing of this area is anticipated to be from public access points, Eastern Shore Natural Gas Company permanent easements, and DelDOT right-of-way.

Staff will be visiting numerous locations associated with the Project. All interested parties planning to attend must provide their own transportation. Those attending should meet at one of the following locations:

- November 4, 2026—*Harrington Loop and North Bridgeville M&R Station:* Valero Gas Station, US–13 (16381 S Dupont Hwy, Harrington, DE) at 10:00 a.m. EST.
- November 5, 2026—*Tidewater Pipeline Segment Upgrades and Delaware City Compressor Station Valve:* ESNG Delaware City Compressor Station (729 School House Road, Delaware City, DE) at 10:00 a.m. EST.
- November 5, 2026—*Barksdale Loop, Telegraph Rd and Barksdale Rd RMV Stations:* High's Convenience Store, Cecil County, MD (5655 Telegraph Road, Elkton, MD) at 11:00 a.m. EST.
- November 5, 2026—*Parkesburg-Daleville Loop, Gum Tree Rd RMV Station, Daleville Compressor Station:* ESNG Daleville Compressor Station (606 Street Road, Cochranville, PA) at 1:00 p.m. EST.

Please use the FERC's free eSubscription service to keep track of all formal issuances and submittals in these dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *https://www.ferc.gov/ferc-online/overview.* Information about specific onsite environmental reviews is posted on the Commission's calendar at *https://www.ferc.gov/news-events/events.*

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202)502–6595 or *OPP@ferc.gov.*

(Authority: 18 CFR 2.1)

Dated: October 28, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–22363 Filed 11–2–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2009–187]

Virginia Electric and Power Company; Notice of Application To Update Shoreline Management Plan Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Shoreline Management Plan Update.

b. *Project No:* 2009–187.

c. *Date Filed:* February 3, 2026.

d. *Applicant:* Virginia Electric and Power Company.

e. *Name of Project:* Roanoke Rapids and Gaston Project.

f. *Location:* The project is located on the Roanoke River, on the Virginia-North Carolina border, in Brunswick and Mecklenburg counties, Virginia, and in Halifax, Northampton, and Warren counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Corey Chamberlain, 804–837–5587, *corwin.d.chamberlain@dominionenergy.com.*

i. *FERC Contact:* Shana High, 202–502–8674, *shana.high@ferc.gov.*

j. *Cooperating agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* November 30, 2026, 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2009–187. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* As a result of a required five-year review process, Virginia Electric and Power Company filed a Shoreline Management Plan update. The update was developed in consultation with stakeholders. In pertinent part, the update clarifies the residential and commercial permitting process and details changes to the construction and use license fee structure. Appendix C (Construction and Use Procedures) and Appendix E (Aquatic Weed Control) were revised, and the 2026 Shoreline Management Plan update includes modifications to the shoreline education section.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

(Authority: 18 CFR 2.1)

Dated: October 29, 2026..

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–22411 Filed 11–2–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 943–152, P–943–153, P–943–154]

Public Utility District No. 1 of Chelan County, Washington; Notice of Applications for Approval of Contracts for the Sale of Power Under Section 22 of the Federal Power Act

Take notice that on October 16, 2026, Public Utility District No. 1 of Chelan County, Washington (Chelan PUD) filed with the Commission three applications for approval of contracts for the sale of power from its licensed Rock Island Hydroelectric Project No. 943 for periods beyond the expiration of its existing license for the project.[1] The project is located on the Columbia River in Chelan and Douglas Counties, Washington.

Section 22 of the Federal Power Act, 16 U.S.C. 815, provides that contracts for the sale and delivery of power for periods extending beyond the termination date of a license may be entered into upon the joint approval of the Commission and the appropriate state public service commission or other similar authority in the state in which the sale or delivery of power is made.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; and (3) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

The applications may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary Search Form'' link. Enter the docket number (P–943–152, P–943–153, and/or P–943–154) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

All comments must be filed by November 30, 2026, 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 10,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy via U.S. Postal Service to: Debbie Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–943–152, P–943–153, and/or P–943–154.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

For further information, contact Chris Chaney at (202) 502–6778 or *christopher.chaney@ferc.gov.*

(Authority: 18 CFR 2.1)

Dated: October 29, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–22414 Filed 11–2–26; 8:45 am]

BILLING CODE 6717–01–P

[1] The three dockets cover three separate agreements between Chelan and different parties: P–943–152 (agreement between Chelan PUD and BP Energy Company); P–943–153 (agreement between Chelan PUD and Portland General Electric Company); and P–943–154 (agreement between Chelan PUD and Brookfield Renewable Trading and Marketing LP).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Exempt Wholesale Generator filings:

Docket Numbers: EG27–27–000.
Applicants: Piney Woods Solar, LLC.
Description: Piney Woods Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/27/26.
Accession Number: 20261027–5156.
Comment Date: 5 p.m. ET 11/17/26.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL27–7–000.
Applicants: Electricity Transmission Competition Coalition, and *Industrial Energy Consumers of America* v. *Southwest Power Pool, Inc.*
Description: Complaint of *Electricity Transmission Competition Coalition,* and *Industrial Energy Consumers of America* v. *Southwest Power Pool, Inc.*
Filed Date: 10/28/26.
Accession Number: 20261028–5186.
Comment Date: 5 p.m. ET 11/27/26.

Take notice that the Commission received the following Electric Rate filings:

Docket Numbers: ER10–1827–016.
Applicants: Cleco Power LLC.
Description: Notice of Change in Status of Cleco Power LLC.
Filed Date: 10/27/26.
Accession Number: 20261027–5157.
Comment Date: 5 p.m. ET 11/17/26.

Docket Numbers: ER16–561–002.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Request for Approval of CAPS 2027 Annual Budget to be effective N/A.
Filed Date: 10/28/26.
Accession Number: 20261028–5165.
Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER22–944–007.
Applicants: Black Rock Wind Force, LLC.
Description: Compliance filing: Amendment to Compliance Filing of Reactive Power Rate Schedule to be effective 3/1/2022.
Filed Date: 10/29/26.
Accession Number: 20261029–5181.
Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER26–3613–001.
Applicants: Kingstree West 115 LLC.
Description: Tariff Amendment: Response to Deficiency Letter and Request for Expedited Action to be effective 10/9/2026.
Filed Date: 10/29/26.
Accession Number: 20261029–5137.
Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–308–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B.SUD to be effective 12/28/2026.
Filed Date: 10/28/26.
Accession Number: 20261028–5157.
Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–309–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2026–10–28—CORE—NITSA/NOA—778–802 to be effective 10/29/2026.
Filed Date: 10/28/26.
Accession Number: 20261028–5159.
Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–310–000.
Applicants: Citizens Pacific Transmission LLC.
Description: § 205(d) Rate Filing: Transmission Owner Tariff and TRR Filing to be effective 12/31/9998.
Filed Date: 10/29/26.
Accession Number: 20261029–5033.
Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–311–000.
Applicants: Dressor Plains Solar, LLC.
Description: Initial rate filing: Filing of Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 11/1/2026.
Filed Date: 10/29/26.
Accession Number: 20261029–5068.
Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–312–000.
Applicants: Prairie State Solar, LLC.
Description: Initial rate filing: Filing of Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 11/1/2026.
Filed Date: 10/29/26.
Accession Number: 20261029–5075.
Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–313–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Attachment AE to Clarify Make Whole Payment Distributions to be effective 12/29/2026.
Filed Date: 10/29/26.
Accession Number: 20261029–5077.
Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–314–000.
Applicants: Switchgrass Plains Solar, LLC.
Description: Initial rate filing: Certificate of Concurrence to be effective 11/1/2026.
Filed Date: 10/29/26.
Accession Number: 20261029–5091.
Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–315–000.
Applicants: Great Plains Solar, LLC.
Description: Initial rate filing: Certificate of Concurrence to be effective 11/1/2026.
Filed Date: 10/29/26.
Accession Number: 20261029–5094.
Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–316–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of GIA, SA No. 7550; Project Identifier No. AF2–224 to be effective 12/29/2026.
Filed Date: 10/29/26.
Accession Number: 20261029–5102.
Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–317–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: DEC–PJM JOA Amendment to be effective 1/1/2027.
Filed Date: 10/29/26.
Accession Number: 20261029–5105.
Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–318–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: SCE 2027 RSBAA Update (TOT Appendix VI) to be effective 1/1/2027.
Filed Date: 10/29/26.
Accession Number: 20261029–5109.
Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–319–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: § 205(d) Rate Filing: Ameren Illinois Company submits tariff filing per 35.13(a)(2)(iii: 2026–10–29_SA 3299 Ameren IL-Norris Electric-Clark County Proj. Spec No. 7 to be effective 12/29/2026.
Filed Date: 10/29/26.
Accession Number: 20261029–5144.
Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–321–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC–NCEMC—Amended and Restated LGIA SA No. 523 to be effective 1/2/2027.
Filed Date: 10/29/26.
Accession Number: 20261029–5170.
Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–322–000.
Applicants: Duke Energy Progress, LLC.
Description: § 205(d) Rate Filing: DEP-Firefly Energy—Second Amended and Restated ASOA-Service Agreement No. 446 to be effective 12/29/2026.
Filed Date: 10/29/26.
Accession Number: 20261029–5175.

Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–323–000.

Applicants: San Diego Gas & Electric.

Description: § 205(d) Rate Filing: 2027 TRBAA Update to be effective 1/1/2027.

Filed Date: 10/29/26.

Accession Number: 20261029–5186.

Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–324–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Section 205 Filing—Further Reforms to Southern's Interconnection Process to be effective 1/1/2027.

Filed Date: 10/29/26.

Accession Number: 20261029–5189.

Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–325–000.

Applicants: DCR Transmission, L.L.C.

Description: § 205(d) Rate Filing: DCR Transmission Annual Transmission Revenue Balancing Account Adjustment to be effective 1/1/2027.

Filed Date: 10/29/26.

Accession Number: 20261029–5193.

Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–326–000.

Applicants: Midcontinent Independent System Operator, Inc., MidAmerican Energy Company.

Description: § 205(d) Rate Filing: MidAmerican Energy Company submits tariff filing per 35.13(a)(2)(iii: 2026–10–29_SA 4545 MidAmerican-MidAmerican E&P Amendment No. 1 (J3107) to be effective 10/29/2026.

Filed Date: 10/29/26.

Accession Number: 20261029–5197.

Comment Date: 5 p.m. ET 11/19/26.

Docket Numbers: ER27–327–000.

Applicants: Overnight Solar LLC.

Description: § 205(d) Rate Filing: Filing of Shared Facilities Agreement to be effective 10/30/2026.

Filed Date: 10/29/26.

Accession Number: 20261029–5201.

Comment Date: 5 p.m. ET 11/19/26.

Take notice that the Commission received the following Foreign Utility Company Status filings:

Docket Numbers: FC27–1–000.

Applicants: Whitewall Power Limited.

Description: Whitewall Power Limited submits Notice of Self-Certification of Foreign Utility Company Status.

Filed Date: 10/28/26.

Accession Number: 20261028–5187.

Comment Date: 5 p.m. ET 11/18/26.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern Time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Dated: October 29, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–22413 Filed 11–2–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP27–65–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: TETLP PCB DEC 2026 Filing to be effective 12/1/2026.

Filed Date: 10/27/26.

Accession Number: 20261027–5091.

Comment Date: 5 p.m. ET 11/9/26.

Docket Numbers: RP27–66–000.

Applicants: Eastern Shore Natural Gas Company.

Description: § 4(d) Rate Filing: WRU Tariff Sheets Effective 12/1/2026 to be effective 12/1/2026.

Filed Date: 10/27/26.

Accession Number: 20261027–5100.

Comment Date: 5 p.m. ET 11/9/26.

Docket Numbers: RP27–67–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10.28.26 Negotiated Rates—Mercuria Energy America, LLC R–7540–02 to be effective 11/1/2026.

Filed Date: 10/28/26.

Accession Number: 20261028–5034.

Comment Date: 5 p.m. ET 11/9/26.

Docket Numbers: RP27–68–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10.28.26 Negotiated Rates—Emera Energy Services, Inc. R–2715–121 to be effective 11/1/2026.

Filed Date: 10/28/26.

Accession Number: 20261028–5036.

Comment Date: 5 p.m. ET 11/9/26.

Docket Numbers: RP27–69–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10.28.26 Negotiated Rates—Emera Energy Services, Inc. R–2715–122 to be effective 11/1/2026.

Filed Date: 10/28/26.

Accession Number: 20261028–5038.

Comment Date: 5 p.m. ET 11/9/26.

Docket Numbers: RP27–70–000.

Applicants: SEMCO Energy Gas Company, Northern States Power Company (Wisconsin).

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of Northern States Power Company, a Wisconsin corporation, et al.

Filed Date: 10/26/26.

Accession Number: 20261026–5182.

Comment Date: 5 p.m. ET 11/9/26.

Docket Numbers: RP27–71–000.

Applicants: Wyoming Interstate Company, L.L.C.

Description: § 4(d) Rate Filing: Removal of Negotiated Rate Agreement (CLR Dec 2026) to be effective 12/1/2026.

Filed Date: 10/28/26.

Accession Number: 20261028–5060.

Comment Date: 5 p.m. ET 11/9/26.

Docket Numbers: RP27–72–000.

Applicants: Sierrita Gas Pipeline LLC.

Description: § 4(d) Rate Filing: 2026 October Quarterly FL&U Filing to be effective 12/1/2026.

Filed Date: 10/28/26.

Accession Number: 20261028–5062.

Comment Date: 5 p.m. ET 11/9/26.

Docket Numbers: RP27–73–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: § 4(d) Rate Filing: Fuel Tracker Filing 10/28/26 to be effective 12/1/2026.

Filed Date: 10/28/26.

Accession Number: 20261028–5074.

Comment Date: 5 p.m. ET 11/9/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18

CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern Time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP26–1240–001.
Applicants: Gulf South Pipeline Company, LLC.
Description: Compliance filing: Amendment to NAESB Order 587–AB Compliance Filing to be effective 1/1/2027.
Filed Date: 10/28/26.
Accession Number: 20261028–5084.
Comment Date: 5 p.m. ET 11/9/26.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern Time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Dated: October 28, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–22359 Filed 11–2–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Electric Corporate filings:

Docket Numbers: EC27–9–000.
Applicants: Genesee Power Station Limited Partnership, Grayling Generating Station Limited Partnership.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Genesee Power Station Limited Partnership, et al.
Filed Date: 10/26/26.
Accession Number: 20261026–5174.
Comment Date: 5 p.m. ET 11/16/26.

Docket Numbers: EC27–10–000.
Applicants: Scioto Ridge Solar LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Scioto Ridge Solar LLC.
Filed Date: 10/27/26.
Accession Number: 20261027–5150.
Comment Date: 5 p.m. ET 11/17/26.

Take notice that the Commission received the following Exempt Wholesale Generator filings:

Docket Numbers: EG27–14–000.
Applicants: Enbridge Holdings (Green Energy) L.L.C., Enbridge Wind (Easter), LLC.
Description: Enbridge Wind (Easter), LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/9/26.
Accession Number: 20261009–5191.
Comment Date: 5 p.m. ET 11/18/26.

Take notice that the Commission received the following Electric Rate filings:

Docket Numbers: ER19–2399–006.
Applicants: Caden Energix Hickory LLC.
Description: Compliance filing: Caden Energix Hickory—Change in Category Status—Updates to MBR Tariff to be effective 10/30/2026.
Filed Date: 10/27/26.
Accession Number: 20261027–5122.
Comment Date: 5 p.m. ET 11/17/26.

Docket Numbers: ER23–1760–005.
Applicants: Guernsey Power Station LLC.
Description: Compliance filing: Compliance Filing to be effective 6/1/2023.
Filed Date: 10/28/26.
Accession Number: 20261028–5080.
Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER23–1760–006.
Applicants: Guernsey Power Station LLC.
Description: Compliance filing: Compliance Filing to be effective 3/1/2024.
Filed Date: 10/28/26.
Accession Number: 20261028–5085.
Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER24–100–004.
Applicants: Adams Solar LLC.
Description: Compliance filing: Adams Solar—Change in Category Status—Updates to MBR Tariff to be effective 10/30/2026.
Filed Date: 10/27/26.
Accession Number: 20261027–5114.
Comment Date: 5 p.m. ET 11/17/26.

Docket Numbers: ER24–101–003.
Applicants: Waverly Solar, LLC.
Description: Compliance filing: Waverly Solar—Change in Category Status—Updates to MBR Tariff to be effective 10/30/2026.
Filed Date: 10/27/26.
Accession Number: 20261027–5133.
Comment Date: 5 p.m. ET 11/17/26.

Docket Numbers: ER24–102–003.
Applicants: Caden Energix Endless Caverns LLC.
Description: Compliance filing: Caden Energix Endless Caverns—Change in Category Status—Updates to MBR Tariff to be effective 10/30/2026.
Filed Date: 10/27/26.
Accession Number: 20261027–5119.
Comment Date: 5 p.m. ET 11/17/26.

Docket Numbers: ER24–109–003
Applicants: Caden Energix Axton LLC
Description: Compliance filing: Caden Energix Axton—Change in Category Status—Updates to MBR Tariff to be effective 10/30/2026.
Filed Date: 10/27/26
Accession Number: 20261027–5115
Comment Date: 5 p.m. ET 11/17/26

Docket Numbers: ER25–799–003.
Applicants: Northumberland Solar, LLC.
Description: Compliance filing: Northumberland Solar—Change in Category Status—Updates to MBR Tariff to be effective 10/30/2026.
Filed Date: 10/27/26.
Accession Number: 20261027–5126.
Comment Date: 5 p.m. ET 11/17/26.

Docket Numbers: ER26–2119–001.
Applicants: Sun Ridge Solar, LLC.
Description: Compliance filing: Sun Ridge Solar—Change in Category Status—Updates to MBR Tariff to be effective 10/30/2026.
Filed Date: 10/27/26.
Accession Number: 20261027–5130.
Comment Date: 5 p.m. ET 11/17/26.

Docket Numbers: ER27–171–001.
Applicants: Tucson Electric Power Company.
Description: Tariff Amendment: OATT Revisions to Reflect SPP Markets Plus Participation—Supplement to be effective 3/31/2027.
Filed Date: 10/28/26.
Accession Number: 20261028–5000.
Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–290–000.
Applicants: New England Hydro Transmission Corporation.
Description: § 205(d) Rate Filing: NEHTC Request for Approval of Updated Depreciation Rates to be effective 1/1/2027.
Filed Date: 10/27/26.
Accession Number: 20261027–5118.
Comment Date: 5 p.m. ET 11/17/26.

Docket Numbers: ER27–291–000.
Applicants: New England Electric Transmission Corporation.
Description: § 205(d) Rate Filing: NEET Request for Approval of Updated

Depreciation Rates to be effective 1/1/2027.

Filed Date: 10/27/26.

Accession Number: 20261027–5127.

Comment Date: 5 p.m. ET 11/17/26.

Docket Numbers: ER27–292–000.

Applicants: Ohio Power Company.

Description: § 205(d) Rate Filing: AEP submits update to Attachment 1 of ILDSA, SA No. 1336 to be effective 10/1/2026.

Filed Date: 10/28/26.

Accession Number: 20261028–5033.

Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–293–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC–NCEMC—Power Purchase Agreement RS No. 773 to be effective 1/1/2027.

Filed Date: 10/28/26.

Accession Number: 20261028–5082.

Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–294–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Establish a Defined Framework for NDPRs to be effective 12/31/9998.

Filed Date: 10/28/26.

Accession Number: 20261028–5090.

Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–295–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 4263R1 Ironclad Grid GIA to be effective 9/30/2026.

Filed Date: 10/28/26.

Accession Number: 20261028–5094.

Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–296–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 4264R1 Bison Grid GIA to be effective 10/2/2026.

Filed Date: 10/28/26.

Accession Number: 20261028–5095.

Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–297–000.

Applicants: Midcontinent Independent System Operator, Inc., Northern States Power Company, a Minnesota corporation, Great River Energy

Description: § 205(d) Rate Filing: Northern States Power Company, a Minnesota corporation submits tariff filing per 35.13(a)(2)(iii: 2026–10–28_SA 4901 NSP–GRE T–TIA (Sherco) to be effective 10/29/2026.

Filed Date: 10/28/26.

Accession Number: 20261028–5097.

Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–298–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 4265R1 Homer Grid GIA to be effective 9/30/2026.

Filed Date: 10/28/26.

Accession Number: 20261028–5104.

Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–299–000.

Applicants: Otter Tail Power Company.

Description: § 205(d) Rate Filing: Revisions to Operating Services Agreement with CPEC, Service Agreement No. 54 to be effective 1/1/2027.

Filed Date: 10/28/26.

Accession Number: 20261028–5108.

Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–300–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3746R3 Tenaska Power Services Co. Attachment AO to be effective 10/1/2026.

Filed Date: 10/28/26.

Accession Number: 20261028–5112.

Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–301–000.

Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.

Description: § 205(d) Rate Filing: ALLETE, Inc. submits tariff filing per 35.13(a)(2)(iii: 2026–10–28_ALLETE Depreciation Rates Filing to be effective 1/1/2026.

Filed Date: 10/28/26.

Accession Number: 20261028–5115.

Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–302–000.

Applicants: Duke Energy Progress, LLC.

Description: § 205(d) Rate Filing: DEP-Town of Waynesville, NC Power Purchase Agreement RS No. 774 to be effective 1/1/2027.

Filed Date: 10/28/26.

Accession Number: 20261028–5124.

Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–303–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Establish Dynamic Schedule Resource Requirements to be effective 12/31/9998.

Filed Date: 10/28/26.

Accession Number: 20261028–5133.

Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–304–000.

Applicants: Startrans IO, LLC.

Description: § 205(d) Rate Filing: Startrans IO, LLC TRBAA Filing to be effective 1/1/2027.

Filed Date: 10/28/26.

Accession Number: 20261028–5136.

Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–305–000.

Applicants: Midcontinent Independent System Operator, Inc., Duke Energy Indiana, LLC.

Description: § 205(d) Rate Filing: Duke Energy Indiana, LLC submits tariff filing per 35.13(a)(2)(iii: 2026–10–28_SA 4902 Duke Energy-Maple Creek E&P (J3084) to be effective 10/29/2026.

Filed Date: 10/28/26.

Accession Number: 20261028–5139.

Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–306–000.

Applicants: Duke Energy Progress, LLC.

Description: Tariff Amendment: DEP-Cancellation of Rate Schedule No. 140 to be effective 12/31/9998.

Filed Date: 10/28/26.

Accession Number: 20261028–5149.

Comment Date: 5 p.m. ET 11/18/26.

Docket Numbers: ER27–307–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 4276; Queue Nos. Y3–088/Y3–089/Y3–090/Y3–091 to be effective 12/28/2026.

Filed Date: 10/28/26.

Accession Number: 20261028–5154.

Comment Date: 5 p.m. ET 11/18/26.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Dated: October 28, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–22360 Filed 11–2–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11659–034]

Alaska Power Company; Notice of Application To Amend Road Management Plan Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Road Management Plan Amendment.

b. *Project No:* 11659–034.

c. *Date Filed:* August 31, 2026.

d. *Applicant:* Alaska Power Company.

e. *Name of Project:* Falls Creek Hydroelectric Project.

f. *Location:* Falls Creek, also known as the Kahtaheena River, approximately five miles east of the town of Gustavus in Hoonah Angoon County, Alaska. There are no federal lands within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* William Brown-Farrell, 907–723–3970, *bill.f@aptalaska.com.*

i. *FERC Contact:* Shana High, 202–502–8674, *shana.high@ferc.gov.*

j. *Cooperating agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* November 27, 2026, 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–11659–034. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* To be consistent with the approved 2016 Public Access and Recreation Plan, Alaska Power Company filed an amended Road Management Plan for Commission approval. The amendment was developed in consultation with stakeholders. In pertinent part, the amendment reflects the requirement to maintain a single gate where the project access road enters the project.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

(Authority: 18 CFR 2.1)

Dated: October 28, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–22358 Filed 11–2–26; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–13681–01–OCSPP]

Avanti Corporation; Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that information submitted to EPA's Office of Pollution Prevention and Toxics (OPPT) pursuant to the Toxic Substances Control Act (TSCA), including information that may be claimed as Confidential Business Information (CBI) by the submitter, will be transferred to or accessed by Avanti Corporation, in accordance with the CBI regulations. Avanti Corporation has

been awarded a contract to perform work in connection with TSCA and access to this information will enable Avanti Corporation to fulfill the obligations of the contract.

DATES: Avanti Corporation will be given access to this information on or before November 9, 2026.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Ira Lyons, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1481; email address: *lyons.ira@epa.gov.*

For general information: The TSCA Assistance Information Service Hotline, Goodwill Vision Enterprises, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (800) 471–7127 or (202) 554–1404; email address*: TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under Docket ID no. EPA–HQ–OPPT–2003–0004. Publicly available docket materials are available electronically through *http://www.regulations.gov.* Additional instructions on commenting on and visiting the docket, along with more information about dockets generally, are available at *https://www.epa.gov/dockets.*

II. What action is the agency taking?

Under Administrative and Technical Support for the Toxic Substances Control Act (TSCA) New Chemical Program (NCP) solicitation number 47QRAA20D002D, task order number 68HERW27F0013, Avanti Corporation will perform technical and administrative tasks to support activities for the TSCA New Chemicals Program, including and not limited to: Tracking regulatory decisions, coordinating communications, preparing correspondences, drafting TSCA Section 5(e) and 5(f) Orders, sanitizing documents containing TSCA CBI, preparing information to be uploaded into ChemView, performing analyses, and other related tasks to support the program. In accordance with the requirements of 40 CFR 2.306(f), EPA has determined that the disclosure of CBI submitted to EPA under all sections of TSCA is necessary for Avanti Corporation to satisfactorily carry out the work required by the contract. Accordingly, Avanti Corporation personnel will be given access to information, including information submitted to EPA under all sections of TSCA, some of which may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters that EPA will provide Avanti Corporation access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract takes place in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until October 31, 2029. If the contract is extended, this access will also continue for the duration of the extended contract without further notice. In accordance with the requirements of 40 CFR 2.306(f), the contract prohibits disclosure of information to a third party without prior written approval from the Agency.

Avanti Corporation personnel will sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI. Records of information provided to Avanti Corporation will be maintained by EPA project officers for this contract. All information supplied to Avanti Corporation by EPA for use in connection with this contract will be returned to EPA when Avanti Corporation has completed its work.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: October 25, 2026.

Douglas M. Troutman,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2026–22392 Filed 11–2–26; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 91 FR 67312.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Friday, October 30, 2026, 1:00 p.m. Eastern Time.

CHANGES IN THE MEETING: This notice announces that the meeting was cancelled. On October 26, 2026, the EEOC published a notice in the **Federal Register**, 91 FR 67312, announcing an open meeting of the Commission to consider the following matter: Rescission of Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended. The meeting was to be held on October 30, 2026, at EEOC Headquarters, Jacqueline A. Berrien Training Center, 131 M Street NE, Washington, DC 20507. The matters to be considered were decided by the Commissioners by notation vote pursuant to Commission voting procedures. Thus, the meeting became unnecessary.

CONTACT PERSON FOR MORE INFORMATION: LaToya Newson, Office of the Executive Secretariat, (202) 921–2750.

This action is taken pursuant to the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: October 30, 2026.

For the Equal Employment Opportunity Commission.

Raymond Peeler,

Associate Legal Counsel, Office of Legal Counsel.

[FR Doc. 2026–22407 Filed 10–30–26; 4:15 pm]

BILLING CODE 6570–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreement to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of General Counsel at (202) 523–5740 or *GeneralCounsel@fmc.gov.*

Agreement No.: 201379–001.

Agreement Name: Crowley/King Ocean Dominican Republic/Haiti Space Charter Agreement.

Parties: Crowley Latin America Services, LLC; and King Ocean Services Limited, Inc. *Filing Party:* Wayne Rohde, Cozen O'Connor.

Synopsis: The Amendment revises Article 5(b) of the Agreement to clarify

the parties do not have authority to negotiate and/or contract jointly with marine terminal operators.

Proposed Effective Date: 10/27/2026.

Agreement No.: 201479.

Agreement Name: Siem Car Carriers AS/Sallaum Lines SA Space Charter Agreement.

Parties: Sallaum Lines SA; and Siem Car Carriers AS.

Filing Party: Ashley W. Craig, Venable LLP.

Synopsis: The Agreement authorizes the parties to engage in a limited range of cooperative activities, including, but not limited to, vessel space chartering.

Proposed Effective Date: 10/27/2026.

Dated: October 30, 2026.

Jennifer Everling,

Assistant Secretary.

[FR Doc. 2026–22410 Filed 11–2–26; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 3, 2026.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Brighton Capital Corporation, Alpharetta, Georgia;* to become a bank holding company by merging with Hazlehurst Investors, Inc., and thereby indirectly acquiring Bank of Hazelhurst, both of Hazlehurst, Georgia.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026–22398 Filed 11–2–26; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 18, 2026.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street, NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Hugh Wayne Clark, Red Boiling Springs, Tennessee;* to acquire additional voting shares of Macon Banctrust, Inc., and thereby indirectly acquire voting shares of Macon Bank and Trust Company, both of Lafayette, Tennessee.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026–22399 Filed 11–2–26; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Trade Commission.

ACTION: Announcement of meeting.

SUMMARY: Please take notice that the Federal Trade Commission (''Commission'') has scheduled a meeting, which will be closed to the public, for the consideration of law enforcement matters.

DATES: This closed Commission meeting will take place on Thursday, November 5, 2026, starting at 1:00 p.m. eastern time.

ADDRESSES: Federal Trade Commission Building, 600 Pennsylvania Avenue NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: April J. Tabor, Secretary of the Commission (phone: 202–326–3310), Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission will be meeting in closed session to consider non-adjudicative law enforcement matters. It has not scheduled any adjudicative items for discussion at this meeting.

Record of Commission's Vote

On October 29, 2026, Commissioners Ferguson and Meador were recorded as voting in the affirmative to close this meeting for non-adjudicative matters. By this vote, the Commission approved withholding from this meeting notice such information as is exempt from disclosure under 5 U.S.C. 552b(c).

Commission's Explanation of Closing

The Commission has determined that the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(3), (4), (7)(A), and (10), and 552b(d)(4) and that the public interest does not require the meeting to be open to the public.

General Counsel Certification

The General Counsel has certified that the meeting may properly be closed for the above agenda matters, citing the following relevant exemptive provisions: 5 U.S.C. 552b(c)(3), (4), (7)(A), and (10).

Expected Attendees

Commission employees and consultants and the stenographer or court reporter preparing any necessary verbatim transcript may attend the closed meeting to the extent permitted under Rule 4.15(c)(1) of the Commission's Rules of Practice.

By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2026–22379 Filed 10–30–26; 11:15 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–304/–304a and CMS–368/–R–144]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by January 4, 2027.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. Electronically. You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier: _____ OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collections

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Reconciliation of State Invoice (ROSI) and Prior Quarter Adjustment Statement (PQAS); *Use:* Form CMS–304 (ROSI) is used by manufacturers to respond to the state's rebate invoice for current quarter utilization. Form CMS–304a (PQAS) is required only in those instances where a change to the original rebate data submittal is necessary. *Form Number:* CMS–304 and –304a (OMB control number: 0938–0676); *Frequency:* Quarterly; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 851; *Total Annual Responses:* 5,788; *Total Annual Hours:* 262,192. (For policy questions regarding this collection contact Robert Giles at 667–290–8626.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Drug Rebate Program State Reporting Forms; *Use:* Form CMS 368 is a report of contact for the State to name the individuals involved in the Medicaid Drug Rebate Program (MDRP) and is required only in those instances where a change to the originally submitted data is necessary. The ability to require the reporting of any changes to these data is necessary to the efficient operation of these programs. Form CMS–R–144 is required from States quarterly to report utilization for any drugs paid for during that quarter. *Form Number:* CMS–368 and –R–144 (OMB control number: 0938–0582); *Frequency:* Quarterly and on occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 234; *Total Annual Hours:* 12,325. (For policy

questions regarding this collection contact Robert Giles at 667–290–8626.)

William N. Parham III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026–22370 Filed 11–2–26; 8:45 am]

BILLING CODE 4169–69–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–D–5942]

Recommendations for Reducing the Risk of Transfusion-Transmitted Hepatitis B Virus; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance titled ''Recommendations for Reducing the Risk of Transfusion-Transmitted Hepatitis B Virus.'' The guidance document provides blood establishments that collect blood and blood components, including Source Plasma, with FDA's recommendations for testing blood and blood components for hepatitis B virus (HBV) to reduce the risk of transfusion-transmitted HBV. The recommendations contained in the guidance apply to the collection of Whole Blood and blood components, including Source Plasma. The guidance announced in this notice finalizes the draft guidance titled ''Recommendations for Testing Blood Donations for Hepatitis B Surface Antigen'' (July 2025 Draft Guidance). The guidance also supersedes the documents titled ''Recommendations for the Management of Donors and Units that are Initially Reactive for Hepatitis B Surface Antigen (HBsAg)'' (December 1987 Memorandum), ''FDA Recommendations Concerning Testing for Antibody to Hepatitis B Core Antigen (Anti-HBc)'' (September 1991 Memorandum), ''Adequate and Appropriate Donor Screening Tests for Hepatitis B; Hepatitis B Surface Antigen (HBsAg) Assays Used to Test Donors of Whole Blood and Blood Components, Including Source Plasma and Source Leukocytes'' (November 2007 Final Guidance), ''Requalification Method for Reentry of Blood Donors Deferred Because of Reactive Test Results for Antibody to Hepatitis B Core Antigen (Anti-HBc)'' (May 2010 Final Guidance), ''Requalification Method for Reentry of Donors Who Test Hepatitis B Surface Antigen (HBsAg) Positive Following a Recent Vaccination against Hepatitis B Virus Infection'' (November 2011 Final Guidance), and ''Use of Nucleic Acid Tests on Pooled and Individual Samples from Donors of Whole Blood and Blood Components, Including Source Plasma, to Reduce the Risk of Transmission of Hepatitis B Virus'' (October 2012 Final Guidance). The guidance supersedes the recommendations specific to HBV in ''Recommendations for the Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis B Virus (HBV), Hepatitis C Virus (HCV) and Human T-Lymphotropic Virus Type I (HTLV–I)'' (July 1996 Memorandum).

DATES: The announcement of the guidance is published in the **Federal Register** on November 3, 2026.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–D–5942 for ''Recommendations for Reducing the Risk of Transfusion-Transmitted Hepatitis B Virus.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3103, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Tami Belouin, Center for Biologics Evaluation and Research, Food and Drug Administration, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document titled ''Recommendations for Reducing the Risk of Transfusion-Transmitted Hepatitis B Virus.'' The guidance provides blood establishments that collect blood and blood components, including Source Plasma, with FDA's recommendations for testing blood and blood components for HBV to reduce adequately and appropriately the risk of transfusion-transmitted HBV. The recommendations contained in the guidance apply to the collection of Whole Blood and blood components, including Source Plasma. Specifically, the guidance provides recommendations on donation testing, donor deferral and requalification of deferred donors. The guidance also provides recommendations for product management, retrieval and quarantine.

In the **Federal Register** of July 16, 2025 (90 FR 32013), FDA announced the availability of the draft guidance titled ''Recommendations for Testing Blood Donations for Hepatitis B Surface Antigen'' dated July 2025. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. Editorial changes were made to improve clarity. The guidance announced in this notice finalizes the recommendations in the draft guidance dated July 16, 2025.

As such, the guidance recommends the discontinuation of testing certain donations for HBsAg and conforming changes for donor requalification and labeling. Namely, we recommend that when donations are tested for HBV deoxyribonucleic acid (DNA) by nucleic acid tests (NAT) and for anti-HBc using screening tests that FDA has licensed, approved, or cleared for such use, in accordance with the manufacturer's instructions, testing for HBsAg is not necessary to reduce adequately and appropriately the risk of transmission of HBV. For Source Plasma donations, we continue to recommend that testing for HBsAg and HBV DNA by NAT is necessary to reduce adequately and appropriately the risk of transmission of HBV.

In addition, the guidance consolidates FDA's recommendations for testing blood and blood components for HBV that have been issued previously in various memoranda and guidance documents. In consolidating the previous recommendations, minor changes were made to reflect advances in the tests used to screen blood donation for HBV and for consistency and alignment with current practices. As such, this final guidance supersedes the prior memoranda and guidance documents containing recommendations on donation testing, donor deferral and requalification of deferred donors, and blood product management, retrieval and quarantine related to HBV listed in the Summary above.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Recommendations for Reducing the Risk of Transfusion-Transmitted Hepatitis B Virus.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 601.12 pertaining to licensed blood establishments reporting changes to an approved biologics license application have been approved under OMB control number 0910–0338. The collections of information in 21 CFR parts 610, 630, and 606 pertaining to current good manufacturing practices for blood, blood components, donor notification, and requirements for donor testing have been approved under OMB control number 0910–0116.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–22369 Filed 11–2–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–4299]

Potency Assurance for Cellular and Gene Therapy Products; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance titled ''Potency Assurance for Cellular and Gene Therapy Products.'' The guidance document provides recommendations to help assure the potency of human cellular therapy or gene therapy (CGT) products at all stages of the product lifecycle. FDA is recommending a comprehensive approach to potency assurance of CGT products that is grounded in quality risk management. For investigational products, we describe how to progressively implement a strategy for potency assurance during product development and provide additional considerations to help assure the potency of products that are undergoing rapid clinical development. For licensed products, we describe requirements for potency assurance, including testing required for lot release assays. The guidance announced in this notice finalizes the draft guidance of the same title issued on December 28, 2023.

DATES: The announcement of the guidance is published in the **Federal Register** on November 3, 2026.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–D–4299 for ''Potency Assurance for Cellular and Gene Therapy Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3103, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Myrna Hanna, Center for Biologics Evaluation and Research, Food and Drug Administration, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document titled ''Potency Assurance for Cellular and Gene Therapy Products.'' This guidance provides recommendations to help assure the potency of human CGT products that are regulated as biological products under section 351 of the Public Health Service Act (42 U.S.C. 262).

This final guidance provides recommendations for developing a science- and risk-based strategy to help assure the potency of human CGT products. A potency assurance strategy is a multifaceted approach that reduces risks to the potency of a product through: (1) manufacturing process design, (2) manufacturing process control, (3) material control, (4) in-process testing, and (5) potency lot release assays. The goal of a potency assurance strategy is to ensure that every lot of a product released will have the specific ability or capacity to achieve the intended therapeutic effect.

The guidance emphasizes that potency assays and their corresponding acceptance criteria should be designed to make meaningful contributions to potency assurance by reducing risks to product potency. We provide illustrative examples of approaches to potency assay development that are grounded in quality risk management. Due to the diversity of CGT products and the product-specific nature of potency assays, the recommendations in this final guidance regarding the selection and design of potency assays are necessarily general.

In the **Federal Register** of December 28, 2023 (88 FR 89707), FDA announced the availability of the draft guidance of the same title dated December 28, 2023. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. A summary of changes includes: advice on integration of potency assurance into existing quality systems, expanded risk assessment guidance, advice on regulatory engagement pathways, and additional practical examples with refined terminology throughout. In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated December 28, 2023.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Potency Assurance for Cellular and Gene Therapy Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to

previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR parts 210 and 211 pertaining to manufacturing, processing, packing, and holding of finished pharmaceuticals and biological products for human use have been approved under OMB control number 0910–0139. The collections of information in 21 CFR 312.23(a)(7)(i) and (ii) pertaining to submission of chemistry, manufacturing, and control information sufficient to assure the proper identification, quality, purity, and strength of an investigational drug in an IND application, and 21 CFR 312.47(a) pertaining to meetings between FDA and sponsors, including pre-IND meetings, have been approved under OMB control number 0910–0014. The collections of information in 21 CFR 600.14(b) pertaining to biological product deviation reporting is included in OMB control number 0910–0458. The collections of information in 21 CFR part 601 pertaining to biologics license applications have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–22427 Filed 11–2–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request: Faculty Loan Repayment Program, OMB No. 0906–0082—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than December 3, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to: *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments,'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–9094.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Faculty Loan Repayment Program OMB No. 0906–0082—Revision.

Abstract: HRSA administers the Faculty Loan Repayment Program (FLRP). FLRP provides health professionals from disadvantaged backgrounds, defined as a geographic and/or economic vulnerability, the opportunity to enter into a contract with HHS to receive repayment of qualifying educational loans in exchange for a minimum of 2 years of service as a full-time or part-time faculty member at an eligible health professions school. The applicant completes and submits an electronic application that identifies for the Secretary of HHS that the applicant comes from an economically or geographically vulnerable background, has a contract with an eligible health professions school to serve as a full-time or part-time faculty member for a minimum of 2 years, and has qualifying outstanding educational loans. In addition, for each undergraduate and/or graduate loan for which repayment is sought, the applicant is required to submit loan documentation verifying the establishment of the educational loan(s) and lender account statements, promissory notes including the original date, and current balance of the outstanding educational loan(s).

This revised ICR contains two new forms. The first is the Employer's Agreement to Loan Repayment Match/Request for a Waiver of the Loan Repayment Match form, which is needed to ensure applicant eligibility and school compliance with the statute. The second is the Semi-annual In-Service Verification form, which is sent to current participants and the institution twice each year to confirm their employment status. The addition of these forms and an increased number of respondents/applicants to the FLRP will increase the estimated burden hours.

This proposed ICR also contains updated terminology with respect to Disadvantaged Background and accompanying definitions by updating the following:

- Changing form title to ''Certification Regarding Vulnerable Background,''
- Replacing ''disadvantaged'' with ''vulnerable'' throughout the form, and
- Replacing ''environmentally disadvantaged'' with ''geographically vulnerable.''

These changes are needed to align the form with the Administration's priority of reinforcing programs that direct resources to areas of greatest need to improve health outcomes. The FLRP statute defines eligible individuals as coming from ''disadvantaged backgrounds'' (42 U.S.C. 293b(a)) but does not define the term. HRSA's use of ''vulnerable background'' operationalizes the statutory term by identifying individuals whose geographic or economic circumstances inhibited their ability to obtain the knowledge, skills, and abilities required to enroll in and graduate from an eligible health professions school. This approach remains consistent with the statute's intent while incorporating more current terminology. These updates were made throughout the form to improve consistency and help ensure that applicants and reviewers understand the criteria using current terminology.

FLRP will define ''vulnerable background'' as ''coming from a geographically vulnerable background or an economically vulnerable background that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from an eligible health professions school.''

Examples of indicators that an individual comes from a geographically vulnerable background include, but are not limited to:

• Individuals who graduated from a high school with low average SAT/ACT scores or below-average state test results.
• Individuals from a school district where 50 percent or less of graduates go to college.
• Individuals raised in households where language barriers affected education access.
• Individuals from a high school where at least 30 percent of enrolled students are eligible for free or reduced-price lunch.
• Individuals who are the first generation in their family to attend college.

An individual from an economically vulnerable background is defined as someone who:

• Comes from a low-income family. Low-income family is defined as a family that has an annual income below the 200 percent of the Department's poverty guidelines;
• Is eligible for a Pell Grant; and/or
• Comes from a family that receives public assistance (*e.g.,* Temporary Assistance to Needy Families, Supplemental Nutrition Assistance Program, Medicaid, public housing).

The Secretary of HHS defines a 'low-income family' for programs included in Titles III, VII, and VIII of the Public Health Service Act as having an annual income that does not exceed 200 percent of the Department's poverty guidelines, which are based on the U.S. Census Bureau's low-income threshold. This threshold is simplified to facilitate the determination of financial eligibility for some federal programs and further adjusted by the Secretary of HHS based on the Consumer Price Index. Family is defined a group of two or more individuals related by birth, marriage, or adoption who live together, or an individual who is not living with any relatives.

A 60-day notice published in the **Federal Register** on August 21, 2026, vol. 91, No. 161, pp. 54335–36. There were no public comments.

Need and Proposed Use of the Information: The information collected will be used to evaluate applicants' eligibility to participate in the FLRP and to monitor FLRP related activities and compliance with program requirements.

Likely Respondents: FLRP applicants and institutions providing employment to the applicants.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Completed by	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Eligible Applications	Applicant	225	1	225	1.00	225.00
Institution/Loan Repayment Employment Form.	Institution, on behalf of applicant.	225	1	225	1.00	225.00
Authorization to Release Information Form	Applicant	225	1	225	0.25	56.25
Certification Regarding Vulnerable Background Form.	Applicant	225	1	225	0.20	45.00
Employer's Agreement to Loan Repayment Match/Request for a Waiver of the Loan Repayment Match Form.	Institution, on behalf of applicant.	225	1	225	1.00	225.00
Participant Semi-Annual In Service Verification Form.	Institution, Participant	150	2	300	0.50	150.00
Total		*600		1,425		926.25

*The total number of unique respondents is estimated to be 600, consisting of 225 applicants and 225 institutions completing forms on behalf of the applicant. Additionally, an estimated 75 participants receiving the loan repayment and 75 institutions verifying service will complete the semi-annual In-Service Verification Form.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2026–22403 Filed 11–2–26; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2025–0396]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0072

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0072, Waste Management Plans, Refuse Discharge Logs, Letters of Designation for Certain Persons-in-Charge (PIC) and Great Lakes Dry Cargo Residue Recordkeeping; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before December 3, 2026.

ADDRESSES: Comments to the Coast Guard should be submitted at *https://www.regulations.gov.* Search for docket number [USCG–2025–0396]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–PM), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King JR. Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone (571) 607–4058, or email *hqs-dg-m-cg-61-pii@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, USCG–2025–0396, and must be received by December 3, 2026.

Submitting Comments

We encourage you to submit comments at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice as being available in the docket, and public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0072.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (91 FR 29977, May 21, 2026) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Analysis

Information Collection Request

Agency: U.S. Coast Guard, Department of Homeland Security.

Title: Waste Management Plans, Refuse Discharge Logs, Letters of Designation for Certain Persons-in-Charge (PIC) and Great Lakes Dry Cargo Residue Recordkeeping.

OMB Number: 1625–0072.

Summary: This information is needed to ensure that: (1) certain U.S. oceangoing vessels develop and maintain a waste management plan; (2) certain U.S. oceangoing vessels maintain refuse discharge records; (3) certain individuals that act as person-in-charge of the transfer of fuel receive a letter of designation, for prevention of pollution; and (4) certain Great Lakes vessels comply with dry cargo residue requirements.

Need: This collection of information is needed as part of the Coast Guard's pollution prevention compliance program.

Forms: N/A.

Affected Public: Owners, operators, masters, and persons-in-charge of vessels.

Number of Respondents: 11,151.

Waste Management Plan Respondents: 4,034.

New Plan Respondents: 194.

Modified Plan Respondents: 3,840.

Refuse Discharge Log Respondents: 3,213.

Vessel Group 1: 546 respondents.

Vessel Group 2: 509 respondents.

Vessel Group 3: 1,713 respondents..

Vessel Group 4: 89 respondents.

Vessel Group 5: 356 respondents.

PIC Designation Letter Respondents: 3,756.

Dry Cargo Residue Respondents: 148.

U.S. Recordkeeping Respondents: 55.

U.S. Management Plan Respondents: 0.

Canadian Recordkeeping Respondents: 70.

Canadian Management Plan Respondents: 0.

Non-Canadian Foreign Recordkeeping Respondents: 15.

Non-Canadian Foreign Management Plan Respondents: 8.

Frequency: On occasion.

Number of Responses per Respondent:

Waste Management Plans: 1 response per respondent.

Refuse Discharge Logs:

Vessel Group 1: 330 responses per respondent.

Vessel Group 2: 660 responses per respondent.

Vessel Group 3: 365 responses per respondent.

Vessel Group 4: 200 responses per respondent.

Vessel Group 5: 262 response per respondent.

PIC Designation Letters: 1 response per respondent.

Dry Cargo Residue:

U.S. Recordkeeping Respondents: 160 responses per respondent.

U.S. Management Plan Respondents: 1 response per respondent.

Canadian Recordkeeping Respondents: 80 responses per respondent.

Canadian Management Plan Respondents: 1 response per respondent.

Non-Canadian Foreign Recordkeeping Respondents: 40 responses per respondent.

Non-Canadian Foreign Management Plan Respondents: 1 response per respondent.

Estimated Time per Respondent:

Waste Management Plans:

New Plans: Approximately 2.5 hours per per respondent.

Modified Plans: Approximately 1 hour per respondent.

Refuse Discharge Logs: Approximately 5 minutes per respondent.

PIC Designation Letters: Approximately 10 minutes per respondent.

Dry Cargo Residue:

U.S. Recordkeeping Respondents: 10 minutes per respondent.

U.S. Management Plan Respondents: 25 hours per respondent.

Canadian Recordkeeping Respondents: 10 minutes per respondent.

Canadian Management Plan Respondents: 2 hours per respondent.

Non-Canadian Foreign Recordkeeping Respondents: 10 minutes per respondent.

Non-Canadian Foreign Management Plan Respondents: 2 hours per respondent.

Total Burden Hours: 111,838 hours.

Dated: October 29, 2026.

Bradley E. White,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2026–22362 Filed 11–2–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2026–0001]

Notices of Emergency and Major Disaster Declarations and Related Amendments

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of amendments to Presidential declarations of emergencies and major disasters, declared under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act from February 2025 through September 2026.

DATES: These amendments were issued between September 2, 2026, and September 24, 2026.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (''Stafford Act'') authorizes the President to declare a major disaster or emergency for a State or Federally Recognized Tribe. Declaration of an emergency or major disaster generally contains the following elements: incident type; incident period; designation of affected geographical areas; designation of Stafford Act assistance programs authorized for the declaration; and Federal cost-share for the assistance programs. FEMA's regulations require FEMA to publish certain declaration information in the **Federal Register**. This includes 44 CFR 206.40(b) (requiring the publication of the designated areas and eligible assistance) and 44 CFR 206.32 (requiring the publication of the incident period). In addition, FEMA publishes in the **Federal Register** notices for declarations that communicate all the required information both upon the initial declaration by the President, and when that information changes because a declaration is amended.

Below are listed 17 amendments to Presidential declarations of emergencies and major disasters, issued under the Stafford Act from September 2, 2026 through September 24, 2026.

[Internal Agency Docket No. FEMA–3650–EM]

Washington; Amendment No. 1 to Notice of an Emergency Disaster Declaration

This notice amends the notice of an emergency declaration for the State of Washington (FEMA–3650–EM), dated August 3, 2026, and related determinations. This amendment was issued September 9, 2026. Notice is hereby given that the incident period for this emergency is closed effective August 31, 2026.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–3653–EM]

Nevada; Amendment No. 1 to Notice of an Emergency Declaration

This notice amends the notice of an emergency declaration for the State of Nevada (FEMA–3653–EM), dated September 1, 2026, and related determinations. This amendment was issued September 14, 2026. Notice is hereby given that the incident period for this emergency is closed effective September 9, 2026.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–4860–DR]

Kentucky; Amendment No. 12 to Notice of a Major Disaster Declaration

This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4860–DR), dated February 24, 2025, and related determinations. This change occurred on September 3, 2026. The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mary Hernandez-Marrero, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Leda M. Khoury as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant;

97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–4864–DR]

Kentucky; Amendment No. 7 to Notice of a Major Disaster Declaration

This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4864–DR), dated April 24, 2025, and related determinations. This change occurred on September 3, 2026. The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mary Hernandez-Marrero, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Leda M. Khoury as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–4875–DR]

Kentucky; Amendment No. 5 to Notice of a Major Disaster Declaration

This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4875–DR), dated May 23, 2025, and related determinations. This change occurred on September 3, 2026. The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mary Hernandez-Marrero, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Leda M. Khoury as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–4913–DR]

Kentucky; Amendment No. 4 to Notice of a Major Disaster Declaration

This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4913–DR), dated May 29, 2026, and related determinations. This change occurred on September 3, 2026. The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mary Hernandez-Marrero, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Leda M. Khoury as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–4926–DR]

Kansas; Amendment No. 2 to Notice of a Major Disaster Declaration

This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–4926–DR), dated June 30, 2026, and related determinations. This change occurred on September 11, 2026. The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John F. Boyle, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Willie G. Nunn as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–4930–DR]

Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4930–DR), dated August 3, 2026, and related determinations. This amendment was issued September 8, 2026. The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 30, 2026.

Perry County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049,

Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–4933–DR]

Indiana; Amendment No. 1 to Notice of a Major Disaster Declaration

This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–4933–DR), dated August 25, 2026, and related determinations. This amendment was issued September 9, 2026.

Notice is hereby given that the incident period for this disaster is closed effective August 24, 2026.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–4933–DR]

Indiana; Amendment No. 2 to Notice of a Major Disaster Declaration

This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–4933–DR), dated August 25, 2026, and related determinations. This amendment was issued September 24, 2026.

The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 25, 2026.

Cass, Pike, and Putnam Counties for Individual Assistance.

Cass, Fountain, Grant, Parke, Pike, Putnam, Starke, Vermillion, and Warren Counties for Public Assistance.

Carroll, Marion, Morgan, Pulaski, Randolph, Rush, and Union Counties for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–4935–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4935–DR), dated September 1, 2026, and related determinations.

This amendment was issued September 9, 2026.

Notice is hereby given that the incident period for this disaster is closed effective August 4, 2026.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–4935–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4935–DR), dated September 1, 2026, and related determinations. This amendment was issued September 24, 2026.

The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 1, 2026.

Grimes, Live Oak, McMullen, and Schleicher Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–4937–DR]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4937–DR), dated September 1, 2026, and related determinations.

This change occurred on September 3, 2026.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mary Hernandez-Marrero, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Leda M. Khoury as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–4940–DR]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

This notice amends the notice of a major disaster declaration for the State

of Kansas (FEMA–4940–DR), dated September 1, 2026, and related determinations. This change occurred on September 11, 2026.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John F. Boyle, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Willie G. Nunn as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–4941–DR]

Oglala Sioux Tribe; Amendment No. 1 to Notice of a Major Disaster Declaration

This notice amends the notice of a major disaster declaration for the Oglala Sioux Tribe (FEMA–4941–DR), dated September 1, 2026, and related determinations. This change occurred on September 2, 2026.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jeffrey Jones, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Edwin J. Martin as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–4943–DR]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–4943–DR), dated September 1, 2026, and related determinations. This change occurred on September 11, 2026.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John F. Boyle, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Willie G. Nunn as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

[Internal Agency Docket No. FEMA–4944–DR]

Colorado; Amendment No. 1 to Notice of a Major Disaster Declaration

This notice amends the notice of a major disaster declaration for the State of Colorado (FEMA–4944–DR), dated September 1, 2026, and related determinations. This change occurred on September 4, 2026.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James R. Stephenson, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Katherine B. Fox as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Cameron Hamilton,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2026–22371 Filed 11–2–26; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6570–N–02]

30-Day Notice Waiver for Continuum of Care Program (CoC); Notice of Waiver

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of waiver.

SUMMARY: This notice announces a waiver, granted by the Secretary, through the Deputy Secretary, of the minimum 30-day application period required under section 102(a) of the HUD Reform Act for the FY2026 Continuum of Care Program (CoC) notice of funding opportunity (NOFO), which was re-opened for application submission on September 18, 2026 (CPD–2600–DC–0025).

FOR FURTHER INFORMATION CONTACT: For information regarding this notice, contact Claudette Fernandez, General Deputy Assistant Secretary for the Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone number (202) 402–6009 (this is not a toll-free number); email *CoCNOFO@HUD.gov.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: Section 102(a) of the HUD Reform Act (42 U.S.C.

3545(a)) sets out the requirements for notice to the public regarding assistance available from HUD. Section 102(a)(3) requires publication of selection criteria not less than 30 days before the deadline for applications or requests for assistance. HUD may waive this requirement if ''the Secretary determines that the waiver is required for appropriate response to an emergency.'' If HUD makes an emergency waiver, then it must publish ''the Secretary's reasons for doing so'' in the **Federal Register** within 30 days. HUD does not believe that it must seek an emergency waiver for the FY2026 CoC NOFO, but is doing so out of an abundance of caution for the reasons below.

Due to litigation, the FY2026 CoC NOFO has been published, vacated, and restored over recent months.

On June 1, 2026, HUD published the FY2026 CoC NOFO with an August 26, 2026, application deadline, which gave applicants 87 days to review the NOFO and submit applications. HUD subsequently published a modified NOFO on July 24, 2026, which maintained an August 26, 2026, application deadline and made no substantive changes apart from adding a mechanism for direct-to-HUD funding for areas with no collaborative applicant, as spelled out in Appendix III of the NOFO.

In early July, two groups of plaintiffs sued to challenge the NOFO in the United States District Court for the District of Rhode Island. On August 7, the district court vacated the FY26 NOFO. ECF 41, *State of Washington* v. *HUD,* 1:26–cv–439 (D.R.I.); ECF 34, *Nat'l All. To End Homelessness* v. *HUD,* 1:26–cv–436 (D.R.I.). The NOFO was thus rendered null and void less than 20 days before the original deadline. HUD appealed the ruling. During the appeal, HUD maintained a copy of the NOFO on its website [*https://www.hud.gov/hud-partners/coc-program-competition*] and sent a listserv message to applicants notifying them of the same.

And on September 16, 2026, the United States Court of Appeals for the First Circuit stayed the lower court's judgment while the Plaintiffs' challenge to the NOFO proceeds. *State of Washington* v. *HUD,* __F.4th__, 2026 WL 2730937 (1st Cir. 2026). As a result, the NOFO was automatically restored. *See* NOFO at 111.

On September 18, 2026, the Department re-opened the FY2026 CoC NOFO (CPD–2600–DC–0025), with a funding application deadline of 8:00 p.m. ET on September 30, 2026, which created an additional 12-day application window to resume the competition that was paused 68 days after publication of the June 1 NOFO. The additional period was less than the 30-day minimum application requirement under section 102(a)(3). But it is part of the larger application period of 80 days, so HUD does not believe that the NOFO requires an emergency waiver under section 102(a)(3). Still, the Secretary has determined that it is nevertheless prudent to issue a waiver.

It was necessary for the Department to establish a short application reopening period for this NOFO to address certain exigent and emergency circumstances. Specifically, HUD is required by Congress to make awards under the NOFO by December 1, 2026. HUD also endeavors to make timely awards to ensure ongoing funding for successful and meritorious projects, and for other projects that the CoCs or Congress may lawfully protect from competition.

HUD established the original August 26 application deadline to build in the necessary amount of time it reasonably expected it would need to review several thousands of applications and make awards. But the District Court ruling, which is now vacated, eliminated part of the approximately 90-day application period HUD originally provided. HUD must now process all applications and make awards within 62 days, which would be the quickest that the program has ever processed applications. It has received close to 8,000 individual project applications, including 3,500 new project applications, and almost 400 CoC applications. Historically, application reviews have required over 90 days to complete, so it cannot afford to lengthen the general application deadline any further.

Applicants have had nearly four months to review the NOFO and prepare applications, so an additional 12-day application period is sufficient time for applicants to finalize and submit their applications while also reserving for HUD time needed to meet the congressionally mandated December 1 deadline. As such, the circumstances demonstrated that an emergency existed that justified the granting of a waiver of the 30-day application period required under section 102(a) of the HUD Reform Act.

Andrew Hughes,

Deputy Secretary.

[FR Doc. 2026–22417 Filed 11–2–26; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7106–N–40]

Privacy Act of 1974; Matching Program

AGENCY: Office of Single-Family Program Development, HUD.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Housing and Urban Development (HUD) and the Social Security Administration (SSA) are providing notice of a new computer matching program. Under this program, SSA will disclose Social Security Number (SSN) verifications to the Federal Housing Administration (FHA) through HUD to verify Borrowers' eligibility to participate in FHA's Single Family mortgage insurance programs. The matching program will enable HUD to verify Social Security numbers and related identifying information submitted by individuals applying for FHA-insured mortgage programs.

DATES: *Comment date:* The deadline to submit comments on the proposed matching program is no later than December 3, 2026. Applicability date: The matching program will be applicable on December 3, 2026. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. FR–7106–N–40 so that we may associate your comments with the correct regulation.

CAUTION: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Electronically.* Interested persons are invited to submit comments electronically to *http://www.regulations.gov.* Commenters should follow the instructions provided on the website to submit comments regarding this matching program. To locate the appropriate notice, commenters may search *Regulations.gov* using the title of this Matching Notice, the participating agency names, or by viewing recently posted HUD dockets and documents.

2. *By Regular Mail.* You may mail written comments to the following address: U.S. Department of Housing and Urban Development, Office of Single-Family Program Development, Home Mortgage Insurance Division, 451 7th Street SW, Washington, DC 20410.

Comments are also available for public viewing on the Federal eRulemaking portal at *https://www.regulations.gov* or in person during regular business hours by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Brian Faux, Director, Office of Single-Family Program Development, Department of Housing and Urban Development 451 7th Street SW, Washington, DC 20410; telephone: (202) 674–9348; email: *Brian.Faux@hud.gov.*

SUPPLEMENTARY INFORMATION: The matching program will be conducted between HUD's Single-Family Mortgage Insurance Origination System (SFMIOS), specifically the Computerized Homes Underwriting Management System (CHUMS) component, and SSA's Master Files of SSN Holders and SSN Applications, referred to as the Enumeration Verification System (EVS). HUD will transmit Borrower identifying information from CHUMS to SSA for verification in connection with FHA Single-Family mortgage insurance programs.

Participating Agencies

SSA, as the source agency, and HUD, as the recipient agency.

Authority for Conducting The Matching Program

The statutory authorities for the matching program include Title I, Section 2 of the National Housing Act (12 U.S.C. 1703), Section 203 of the National Housing Act (12 U.S.C. 1709), Section 255 of the National Housing Act (12 U.S.C. 1715z-20), 31 U.S.C. 7701, 42 U.S.C. 3543, Section 1106 of the Social Security Act (42 U.S.C. 1306), and Section 7213 of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–458.

Purpose(s)

This agreement sets out the terms, safeguards, and procedures under which SSA, as the source agency, will disclose SSN verifications to FHA, through the HUD, to verify Borrowers' eligibility to participate in FHA's Single-Family mortgage insurance programs. The matching program supports the accuracy and reliability of borrower information used in eligibility determinations.

Categories of Individuals

Individuals applying for mortgage loan insurance issued to FHA-approved lenders under HUD's Single-Family mortgage insurance programs. This includes Borrowers, Non-Borrowing Spouses, and other individuals listed on the mortgage application whose information must be verified for eligibility.

Categories of Records

Records involved in this matching program include Borrower identifying information submitted by HUD to SSA for verification through SSA's Enumeration Verification System (EVS). HUD will submit the following data elements for each Borrower who has provided written consent through Form HUD–92900–A, HUD Addendum to the Uniform Residential Loan Application: first name, last name, Social Security Number (SSN), and date of birth.

SSA will compare the submitted information against SSA records and return a verification response to HUD. The SSA response will include a match/no-match response code, and in the case of a no-match response, the applicable response code and explanatory information. SSA may also provide a response code indicating that a death record was found, when applicable.

The information exchanged under this matching program will be used by HUD to support verification of borrower identifying information in connection with FHA Single-Family mortgage insurance programs.

System(s) of Records

SSA's system of records for disclosure under this Agreement is the Master Files of SSN Holders and SSN Applications (referred to as the Enumeration System), 60–0058, last fully published at 90 FR 10025 (February 20, 2025) and updated at 90 FR 50879 (December 12, 2025), which maintains records about each individual who has applied for and obtained a SSN. HUD's system of records for disclosures under this Agreement is the Single-Family Mortgage Insurance Origination System, HUD/HSNG.03, last fully published at 90 FR 36173 (August 1, 2025) and modified at 91 FR 17290 (April 6, 2026). HUD/HSNG.03 covers three integrated systems: FHA Connection (FHAC), Computerized Homes Underwriting Management System (CHUMS), and Loan Application Management System (LAMS) and will be used to match data transferred from SSA's Enumeration Verification System (60–0058) to HUD.

The routine uses of HUD/HSNG–03 permit the disclosures needed to conduct this matching program. Specifically, Routine Use L permits disclosure to the Social Security Administration through a computer matching program to verify the eligibility of applicants and participants in FHA's housing finance programs.

Priscilla W. Clark,

Senior Agency Official for Privacy, Office of Administration.

[FR Doc. 2026–22357 Filed 11–2–26; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A2407–014–004–065516; O2509–014–004–125222.1; LLOR957000]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Oregon State Office, Portland, Oregon, 30 calendar days from the date of this publication. The surveys announced in this notice, which were executed at the request of the BLM and the National Park Service, are necessary for the management of these lands.

DATES: Protests must be received by the BLM Oregon State Office prior to the scheduled date of official filing, December 3, 2026.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW 3rd Avenue, Portland, Oregon 97204, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Robert Femling, telephone: (503) 808–6633, email: *rfemling@blm.gov,* Branch of Geographic Sciences, Bureau of Land Management, 1220 SW 3rd Avenue, Portland, Oregon 97204. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The plats of survey of the following described lands are scheduled to be officially filed in the BLM Oregon State Office, Portland, Oregon:

Willamette Meridian, Oregon

T. 19 S, R. 4 W, sections 15, 27, and 35, accepted August 13, 2026
T. 15 S, R. 7 W, sections 16 and 21, accepted September 8, 2026
T. 27 S, R. 3 W, sections 1, 9, 13, 15, 21, 27, accepted September 9, 2026
T. 27 S, R. 2 W, sections 5, 6, 7, and 30, accepted September 9, 2026
T. 27 S, R. 4 W, section 13, accepted September 9, 2026
T. 30 S, R. 9 W, sections 23, 27, and 35, accepted September 11, 2026
T. 31 S, R. 9 W, section 1, accepted September 11, 2026
T. 35 S, R. 3 W, sections 1, 3, 4, 6, 7, 9, 10, 15, 18, 23, 27, & 29, accepted September 17, 2026
T. 16 S, R. 1 W, sections 15, 23, 33, accepted September 22, 2026
T. 17 S, R. 1 W, section 17, accepted September 22, 2026

Willamette Meridian, Washington

T. 33 N, R. 17 E, section 26, accepted September 9, 2026
T. 40 N, R. 26 E, section 10, accepted September 16, 2026

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the State Director for Oregon/Washington, Bureau of Land Management, at the address listed in the **ADDRESSES** section of this notice.

The notice of protest must identify the specific plat(s) of survey that the person or party wishes to protest. The notice of protest must be received in the BLM Oregon State Office no later than the scheduled date of the proposed official filing plat(s) of survey being protested, see the **DATES** section earlier; if received after regular business hours, a notice of protest will be considered filed the next business day. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered.

A written statement of reasons in support of the protest, if not filed with the notice of protest, must be filed with the BLM State Director for Oregon/Washington within 30 days after the notice of protest is received.

If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day after all timely protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest, you should be aware that the documents you submit, including your personal identifying information, may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C., Chapter 3)

Robert Femling,

Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2026–22367 Filed 11–2–26; 8:45 am]

BILLING CODE 4331–24–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A2407–014–004–065516; #O2509–014–004–125222.1; LLES961000]

Notice of Filing of Plat of Survey; Massachusetts, Stay Lifted

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of official filing.

SUMMARY: On November 18, 2019, in the **Federal Register**, Volume 84, Number 222, on page 63672 a notice titled ''Notice of Filing of Plat of Survey; Massachusetts, Stayed'' was filed. Said notice referenced the stay of the plat of the dependent resurvey and corrective dependent resurvey of portions of the boundaries of the ''Public Settlement Lands'' recited in the Act of August 18, 1987, (Pub. L. 100–95) held in trust for the Mashpee Wampanoag Tribe, in the Town of Aquinnah, Dukes County, in the State of Massachusetts, accepted April 26, 2019. The protest against the survey was dismissed on February 26, 2026 and the plat of survey was officially filed in Eastern States Office, Falls Church, Virginia on February 27, 2026. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $7.50 per copy.

Leon W. Chmura,

Acting Chief Cadastral Surveyor.

[FR Doc. 2026–22397 Filed 11–2–26; 8:45 am]

BILLING CODE 4331–25–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Fee Rate and Fingerprint Fees

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the National Indian Gaming Commission (NIGC) has adopted its annual fee rates of 0.00% for tier 1 and 0.065% (.00065) for tier 2. While the rate for tier 1 remains the same, the tier 2 rate has been lowered from 0.08% to 0.065%. The tier 2 annual fee rate represents the lowest fee rate adopted by the NIGC since FY22. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the NIGC. If a tribe has a certificate of self-regulation, the fee rate on Class II revenues shall be 0.0325% (.000325) which is one-half of the annual fee rate. The annual fee rates are effective November 1, 2026, and will remain in effect until new rates are adopted. The NIGC has also adopted its fingerprint processing fee of $40 per card which is $4 lower than the current fee of $44 per card. The fingerprint processing fee is effective November 1, 2026, and will remain in effect until the Commission adopts a new rate.

FOR FURTHER INFORMATION CONTACT: Yvonne Lee, National Indian Gaming Commission, 1849 C Street NW, Mail Stop #1621, Washington, DC 20240; telephone (202) 632–7003; fax (202) 632–7066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) established the National Indian Gaming Commission, which is charged with regulating gaming on Indian lands.

Commission regulations (25 CFR 514) provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates and the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission. All gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations, and report and pay any fees that are due to the Commission. It is necessary for the Commission to maintain the fee rate to ensure that the agency has sufficient funding to fully meet its statutory and regulatory responsibilities. In addition, it is critical for the Commission to maintain an

adequate transition carryover balance to cover any cash flow variations.

Pursuant to 25 CFR 514, the Commission must also review annually the costs involved in processing fingerprint cards and set a fee based on fees charged by the Federal Bureau of Investigation and costs incurred by the Commission. Commission costs include Commission personnel, supplies, equipment & infrastructure costs, and postage to submit the results to the requesting tribe. The decrease in FY27 fingerprint rate is attributed to improved efficiencies achieved through standardization of operational processes and Agency IT modernization initiatives resulting in the overall reduction of staff time, travel expenditures, and maintenance and support of IT systems allocated to fingerprint processing services. The Commission will continue its commitment in FY27 to ensure the NIGC and participating tribes can continue to use FBI criminal history report information (CHRI) to assist in determining a key employee or primary management official's eligibility for a gaming license.

To ensure compliance with Executive Order 14247, which became effective on March 25, 2025, all payments made to the NIGC shall be submitted and processed electronically using the *Pay.gov* website. Tribes can visit the NIGC website at *www.nigc.gov* for details on how to sign into the system, information required for submission, and how to change and correct submissions.

Dated: October 29, 2026.

William H. Kirkland,

Vice Chairman.

Dated: October 29, 2026.

Sharon M. Avery,

Associate Commissioner.

[FR Doc. 2026–22361 Filed 11–2–26; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–44111; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before October 10, 2026, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by November 18, 2026.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 2013, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 2013, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before October 10, 2026. Pursuant to 36 CFR 60.13, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers.

Key: State, County, Property Name, Multiple Name(if applicable), Address/Boundary, City, Vicinity, Reference Number.

ALABAMA

Jefferson County

Mountain Brook Club, 19 Beechwood Road, Birmingham, SG100013613

Madison County

Gurley Addition and Brothers Heights Historic District, Beasley Ave. NW, Bell Ave. NW, Fitcheard Ave. NW1, Lee Drive NW, Magnolia Drive NW, Mitchell Drive NW, Pulaski Pike NW, and Stanley Drive NW. Huntsville, SG100013614

Magnolia Terrace Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS), Councill Street Northwest, Hammonds Avenue Northwest, Hammonds Circle Northwest, Moore Avenue Northwest, Powers Avenue Northwest, Pulaski Pike Northwest. Huntsville, MP100013615

MONTANA

Powder River County

Powder River County Bank, 119 North Park, Broadus, SG100013625

NEW YORK

Chenango County

Broad Street-Main Street Historic District (Boundary Increase), Portions of Broad Street. Main Street. Park Place. Court Street. City Plaza Hubbard Avenue, Norwich, BC100013622

Clinton County

Plattsburgh United Methodist Church, 127 Beekman Street, Plattsburgh, SG100013624

New York County

Holcombe Rucker Park Basketball Court, Harlem River Drive and Frederick Douglass Boulevard at West 155th Street, New York, SG100013620

Steuben County

Village of Hammondsport Historic District (Boundary Increase), 2 Pulteney St. and 14 Pulteney St., Hammondsport, BC100013623

Ulster County

Forstmann Castle, 2000 Frost Valiev Rd, Denning, SG100013619

TEXAS

Travis County

San Bernard Historic District, Roughly San Benard St., Rosewood Ave., Bob Harrison St., Navasota St., E 12th St., Olive St., and Catalpa St., Austin, G100013617

VERMONT

Franklin County

Highgate Manor, 464 Highgate Road, Highgate, SG100013628

WYOMING

Converse County

La Prele Mammoth site, Address Restricted, Douglas vicinity, SG100013626

A request for removal has been made for the following resource(s):

SOUTH DAKOTA

Lawrence County

Buskala, Henry Ranch, (Architecture of Finnish Settlement TR), FDR 206, Dumont vicinity, OT85003488

Additional documentation has been received for the following resource(s):

NEW YORK

Chenango County

Broad Street-Main Street Historic District (Additional Documentation), Irregular pattern between Hayes and Mechanic Sts. and Maple Ave. and City Hall, Norwich, AD75001178.

Authority: 36 CFR 60.13

Lisa P. Davidson,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2026–22422 Filed 11–2–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–44112; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before October 17, 2026, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by November 18, 2026.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 2013, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 2013, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before October 17, 2026. Pursuant to 36 CFR 60.13, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers.

Key: State, County, Property Name, Multiple Name(if applicable), Address/Boundary, City, Vicinity, Reference Number.

CONNECTICUT

New Haven County

Chase Brass and Copper Company Rolling Mill_(No. 1) Historic District, 526 and 730 North Main Street, 40 East Farm Street, Waterbury, SG100013629

INDIANA

Allen County

Maple-Park Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS), roughly bound by Park Avenue on the south, Broadway on the East, Maple Avenue on the north. Thompson Avenue on the west and 1201–1245 Huestis Avenue. Fort Wayne MP100013644, Woodhurst Historic District, (Residential Planning and Development in Indiana, 1940–1973 MPS), Roughly bounded by Pettit Avenue, by Airport Expressway, Fairfield Avenue and South Wayne Avenue, and Southwood Avenue and St. Mary's River Greenway Trail, Fort Wayne, MP100013648 Crosby, Grace E, House, 413 W DeWald St., Fort Wayne, SG100013649

Boone County

Zionsville Historic District, Roughly bounded by Ash and Sycamore Streets on the north and south, and Elm and 6th Streets on the east and west including Oak and 9th Streets on the north and west in the southwest part, Zionsville, SG100013643

Monroe County

Kohr Building—Bloomington Hospital, 601 W 2nd Street, Bloomington, SG100013647

Newton County

Strohm-Ade-Barr House, 508 N 3rd Street, Kentland, SG100013650

St. Joseph County

North St. Joseph-River Bend Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS), Bounded bv North St. Joseph Street and the St. Joseph River on the west and east, and by Marion and Bartlett Streets on the south and north, respectively. South Bend, MP100013645

Lincoln Way East Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS), Roughly bounded by Lincoln Way East on the n01th. Prinz Court on the south, Miami Street on the west, and just west of Vernon Street on the east, South Bend, MP100013646

LOUISIANA

Calcasieu Parish

The First Baptist Church of Lake Charles, 830 Hodges—417 Pujo Street, Lake Charles, SG100013635

MISSISSIPPI

Sunflower County

Drew School (Rosenwald), 130 West Shaw Avenue, Drew, SG100013637

MONTANA

Yellowstone County

Wayman Chapel African Methodist Episcopal Church and Parsonage, (Black Montana's Heritage Places MPS), 402 South 25th Street and 2508 4th Avenue South, Billings, MP100013634

NEW YORK

Albany County

Abram Hilton Apartments, 2nd Ave., 5th St., and Broadway, Watervliet, SG100013638

Michael J Day Apartments and Daniel P. Quinn Apartments, Generally Broadway, 24th St., 2nd Ave., and 19* St., Watervliet, SG100013639

Eugene Hanratta Apartments, 500 16th Street, Watervliet, SG100013640

Clinton County

Mooers Junction Historic District, 103 and 109 Maple Street, Mooers, SG100013642

Onondaga County

James Plaza, 3401 James Street, Syracuse, SG100013641

OHIO

Adams County

Manchester Downtown Historic District, Second Street between Washington Avenue and just west of Pearl Street, west side of Pike Street and east side of Pearl Street. Manchester, SG100013631

PENNSYLVANIA

Bucks County

Thomas Janney Historic Agricultural District, (Agricultural Resources of Pennsylvania c1700–1960 MPS), 949 Mirror Lake Road, Makefield, MP100013632

Huntingdon County

Stone Creek Chapel, 105 Penn Street, Huntingdon, SG100013636

TEXAS

Jim Hogg County

Scotus College, 504 East Santa Clara St., Hebbronville, SG100013633

UTAH

Sanpete County

Arnoldus House, 110 S 300 West, Moroni, SG100013655

A request for removal has been made for the following resource(s):

INDIANA

Knox County

Knox County Poor Asylum, (County Homes of Indiana MPS), 2008 S Hart Street Rd., Vincennes vicinity, OT100003183

Marion County

Mt. Pisgah Lutheran Church, 701 N Pennsylvania St., Indianapolis, OT78000048

Additional documentation has been received for the following resource(s):

INDIANA

St. Joseph County

Oliver, Joseph D., House (Additional Documentation), 808 W Washington Ave.; 201 Chapin Street, South Bend, AD73000043

PENNSYLVANIA

Philadelphia County

Philadelphia Naval Shipyard Historic District (Additional Documentation), S Broad St., Philadelphia, AD99001579

WEST VIRGINIA

Randolph County

Helvetia Village Historic District (Additional Documentation), SR 45 and SR 46, Helvetia, AD78002810

Authority: 36 CFR 60.13.

Lisa P. Davidson,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2026–22423 Filed 11–2–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–43949; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before October 3, 2026, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by November 18, 2026.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 2013, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 2013, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before October 3, 2026. Pursuant to 36 CFR 60.13, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers.

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

IDAHO

Kootenai County

Carousel Arabian Ranch, (Historic Agricultural Properties of Cougar Gulch, Kootenai County, Idaho 1888–1976 MPS), 4175 West Cougar Gulch Road, Coeur d'Alene vicinity, MP100013592.

MASSACHUSETTS

Suffolk County

Historic Exchange District, Approx. City Hall Ave, Congress St., Court Sq, Devonshire St., Federal St., Franklin St., 87 Kilby St., Liberty St., Milk St., Post Office Sq., Province St., School St., State St., Washington St., and Water St., Boston, SG100013611.

MISSISSIPPI

Choctaw County

Cochran-Pinnix Hotel, 22 East Quinn Street, Ackerman, SG100013590.

MONTANA

Meagher County

Sixteen School, 400 feet south of Francis Road, west edge of Sixteen, MT, Sixteen, SG100013612.

NEW YORK

Cortland County

Sig Sautelle Circus House, 161 South Main Street, Homer, SG100013609.

Erie County

East Aurora Downtown Historic District, Portions of Main Street, Millard Fillmore Place, Elm Street, Riley Street, and Olean Street, East Aurora, SG100013608.

Lewis County

Lyons Falls School, 6832 McAlpine Street, Lyons Falls, SG100013607.

Ontario County

Bank of Geneva, 336 South Main Street, Geneva, SG100013610.

St. Lawrence County

Waddington Historic District (Boundary Increase), Maple St. Clinton St, Main St. Fenton St. Oak St. St. Lawrence Ave. Maiden Ln, Lincoln Ave, Waddington, BC100013606.

TENNESSEE

Claiborne County

Claiborne County Courthouse, (Historic County Government Facilities in Tennessee MPS), 1740 Main Street, Tazewell, MP100013596.

Johnson County

Johnson County Courthouse, (Historic County Government Facilities in Tennessee MPS), 222 W Main Street, Mountain City, MP100013595.

Lake County

Lake County Courthouse, (Historic County Government Facilities in Tennessee MPS), 229 Church Street, Tiptonville, MP100013603.

Lawrence County

Lawrence County Courthouse, (Historic County Government Facilities in Tennessee MPS), 240 W Gaines Street, Lawrenceburg, MP100013601.

Morgan County

Morgan County Courthouse, (Historic County Government Facilities in Tennessee MPS), 415 North Kingston, Wartburg, MP100013598.

Sequatchie County

Dunlap Mercantile, 15664 Rankin Avenue, Dunlap, SG100013597.

Shelby County

Braden Lodge No. 201, 1586 Kansas Street, Memphis, SG100013599.

Weakley County

Weakley County Courthouse, (Historic County Government Facilities in Tennessee MPS), 116 W Main Street, Dresden, MP100013602.

Additional documentation has been received for the following resource(s):

NEW YORK

St. Lawrence County, Waddington Historic District (Additional Documentation), Jct. of NY 37 and La Grasse St., Waddington, AD92000457.

Westchester County

Tarrytown Music Hall (Additional Documentation), 11 Main St., Tarrytown, AD80002795.

VIRGINIA

Winchester INDEPENDENT CITY, Glen Burnie (Additional Documentation), 801 Amherst St., Winchester (Independent City), AD79003305.

Authority: 36 CFR 60.13.

Lisa P. Davidson,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2026–22424 Filed 11–2–26; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Shrimp and Products Containing Same, DN 3945;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Versaggi Shrimp Corp. and W&W Dock LLP on October 28, 2026. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain shrimp and products containing same. The complaint names as respondents: Nekkanti Sea Foods Ltd. of India; Eastern Fish Company of Teaneck, NJ; ALDI SÜD Dienstleistungs-SE & Co. oHG of Germany; ALDI Inc. of Batavia, IL; Koninklijke Ahold Delhaize N.V. of The Netherlands; Ahold Delhaize USA of Quincy, MA; and Meijer, Inc of Grand Rapids, MI. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business (5:15 p.m.) [1], eight calendar days after publication of this notice in the **Federal Register**. Complainant(s) may file replies to any written submissions no later than three calendar days after the date on which the written submissions were due. Notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure, the deadlines for written submissions and replies shall be counted by calendar days starting with the first calendar day following the **Federal Register** publication date or the due date for written submissions, respectively. The provisions of § 201.14(a) regarding the last day of the period still apply concerning the due date of any filings. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3945'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [2]). Please note the Secretary's Office will accept only electronic filings unless an exemption is granted. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information,

[1] *See* 19 CFR 201.3(c).

[2] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf.*

including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel [3], solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS [4].

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 29, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–22378 Filed 11–2–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1527]

Certain Extrusion-Coated Magnet Wire; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 29, 2026, under section 337 of the Tariff Act of 1930, as amended, on behalf of Essex Solutions Inc. of Atlanta, Georgia and Essex Solutions USA LLC of Atlanta, Georgia. A supplement was filed on October 13, 2026. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain extrusion-coated magnet wire by reason of the infringement of certain claims of U.S. Patent No. 8,847,075 (''the '075 patent''), U.S. Patent No. 9,224,523 (''the '523 patent''), and U.S. Patent No. 10,210,966 (''the '966 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2025).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 29, 2026, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1 and 3 of the '075 patent; claims 1–4 of the '523 patent; and claims 1–5 of the '966 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''extrusion-coated magnet wire having an outer layer formed from an extruded thermoplastic resin'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Essex Solutions Inc., 5770 Powers Ferry Road NW, Suite 400, Atlanta, GA 30327

Essex Solutions USA LLC, 5770 Powers Ferry Road NW, Suite 400, Atlanta, GA 30327

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Wellascent Electronic (Ganzhou) Co., Ltd., No. 788 Jinpenshan Road, Zhanggong District, Ganzhou, Jiangxi, China 341000

Wellascent Technologies USA LLC, 1050 South State Highway 161, Grand Prairie, TX 75051

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

The Commission is interested in the development of a thorough record on domestic industry in this investigation to facilitate a holistic review of all relevant considerations. Accordingly, the presiding administrative law judge may wish to consider what information will be necessary to make a determination with respect to complainant's domestic industry allegations under subparagraphs (A), (B), and (C) of section 337(a)(3) based on an industry that exists or is in the process of being established; including the extent to which these allegations rely on expenditures made by third parties; and the extent to which expenditures are made outside the United States related to the domestic industry article(s) by any entity.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the

[3] All contract personnel will sign appropriate nondisclosure agreements.

[4] Electronic Document Information System (EDIS): *https://edis.usitc.gov*

notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 29, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–22372 Filed 11–2–26; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of National Council on the Humanities

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the National Council on the Humanities will meet to advise the Chairman of the National Endowment for the Humanities (NEH) with respect to policies, programs and procedures for carrying out his functions; to review applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965 and make recommendations thereon to the Chairman; and to consider gifts offered to NEH and make recommendations thereon to the Chairman.

DATES: The meeting will be held on Thursday, November 19, 2026, from 10:00 a.m. ET until adjourned.

ADDRESSES: The meeting will be held by videoconference originating at Constitution Center, 400 7th Street SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, 4th Floor, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: The National Council on the Humanities is meeting pursuant to the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951–960, as amended). The National Council on the Humanities will convene by videoconference on November 19, 2026, from 10:00 a.m. ET until adjourned, to discuss specific grant applications and programs before the Council. The agenda for the meeting will be as follows:

I. Call to Order

II. Quorum and Minutes of Previous Meeting

III. Reports

a. Chairman's Remarks

b. Budget Report

c. Special Assistant to the Chairman Remarks

d. Deputy Director for Special Projects Remarks

e. Actions on Requests for Chairman's Grants and Supplemental Funding

f. Actions on Previously Considered Applications

IV. Division of Collections and Infrastructure

V. Division of Federal/State Partnership

VI. Division of Lifelong Learning

VII. Division of Research

This meeting of the National Council on the Humanities will be closed to the public pursuant to sections 552b(c)(4), 552b(c)(6), and 552b(c)(9)(B) of Title 5 U.S.C., as amended, because it will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, and discussion of certain information, the premature disclosure of which could significantly frustrate implementation of proposed agency action. I have made this determination pursuant to the authority granted to me by the Chair's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: October 30, 2026.

Elizabeth Voyatzis,

Acting General Counsel, National Endowment for the Humanities.

[FR Doc. 2026–22428 Filed 11–2–26; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2026–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of November 2, 9, 16, 23, 30, and December 7, 2026. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please contact the Reasonable Accommodations Resource by email at *Reasonable_Accommodations.Resource@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of November 2, 2026

There are no meetings scheduled for the week of November 2, 2026.

Week of November 9, 2026—Tentative

There are no meetings scheduled for the week of November 9, 2026.

Week of November 16, 2026—Tentative

There are no meetings scheduled for the week of November 16, 2026.

Week of November 23, 2026—Tentative

There are no meetings scheduled for the week of November 23, 2026.

Week of November 30, 2026—Tentative

There are no meetings scheduled for the week of November 30, 2026.

Week of December 7, 2026—Tentative

There are no meetings scheduled for the week of December 7, 2026.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held

at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: October 30, 2026.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2026–22441 Filed 10–30–26; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2026–4687]

Application for Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Consideration Determination and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received, and is considering approval of one amendment request. The license amendment request is for Calvert Cliffs Nuclear Power Plant, Units 1 and 2. For the license amendment request, the NRC proposes to determine that it involves no significant hazards consideration (NSHC). Because the amendment request contains sensitive unclassified non-safeguards information (SUNSI), the NRC is issuing an order imposing procedures to obtain access to SUNSI for contention preparation by persons who file a hearing request or petition for leave to intervene.

DATES: Comments must be filed by December 3, 2026. A request for a hearing or petitions for leave to intervene must be filed by January 4, 2027. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by November 13, 2026.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2026–4687. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301–415–1003; email: *Bridget.Curran@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Nuclear Material Safety and Safeguards, Mail Stop: TWFN–5–A85, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Guidance and Publications Branch.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Susan Lent, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1365; email: *Susan.Lent@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2026–4687, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2026–4687.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin ADAMS Public Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2026–4687, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to section 189a.(1)–(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves NSHC, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes a notice of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment request involves NSHC. Under the Commission's

regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for the amendment request is shown as follows.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendments before expiration of the 60-day period provided that its final determination is that the amendments involve NSHC. In addition, the Commission may issue the amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action on the amendments prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final NSHC determination for the amendments, any hearing on the amendments will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of NSHC, which will serve to establish when the hearing is held. If the final determination is that the license amendment request involves NSHC, the Commission may issue the amendments and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendments. If the final determination is that the license amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and the NRC's public website (*https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate*).

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056), and on the NRC's public website (*https://www.nrc.gov/site-help/e-submittals.html*).

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to: (1) request a digital identification (ID) certificate, which allows the participant (or their counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website (*https://www.nrc.gov/site-help/e-submittals/getting-started.html*). After a digital ID certificate is obtained and a docket is created, the participant must submit adjudicatory documents in the Portable Document Format. Guidance on submissions is available on the NRC's public website (*https://www.nrc.gov/site-help/electronic-sub-ref-mat.html*). A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory

documents are filed in order to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website (*https://www.nrc.gov/site-help/e-submittals.html*), by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available on the NRC's public website (*https://ehd.nrc.gov*), unless otherwise excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing docket where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket numbers, date of application, ADAMS accession number, and location in the application of the licensee's proposed NSHC determination. For further details with respect to this license amendment application, see the application for amendment, publicly available portions of which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Constellation Energy Generation, LLC; Calvert Cliffs Nuclear Power Plant, LLC; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert County, MD

Docket Nos	50–317, 50–318.
Application Date	August 11, 2026.
ADAMS Accession No	ML26223A433.
Location in Application of NSHC	Pages 12–13 of Attachment 1.
Brief Description of Amendments	The proposed amendments would revise the Technical Specifications (TSs) at each facility by updating TS 3.1.4, ''Control Element Assembly (CEA) Alignment,'' to permit continued operation for up to 7 days at reduced power with a known, misaligned CEA in the reactor core. The proposed change also includes an update to the time allowed to restore a single CEA misaligned between 7 and 15 inches prior to a required power reduction. The proposed change also includes an administrative update to the TS 5.6.5, Core Operating Limits Report (COLR), reference 5.6.5.b.10.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jason Zorn, Associate General Counsel, Constellation Energy Generation, LLC, 4300 Winfield Road, Warrenville, IL 60555.
NRC Project Manager, Telephone Number	Scott Wall, 301–415–2855.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation; Constellation Energy Generation, LLC; Calvert Cliffs Nuclear Power Plant, LLC; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert County, MD

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing or opportunity for hearing, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. *Filing of Contentions.* Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. *Review of Denials of Access.*

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within five days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. *Review of Grants of Access.* A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Authority: 42 U.S.C. 2011 *et seq.*

Dated: October 30, 2026.

For the Nuclear Regulatory Commission.

Jody Martin,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of FEDERAL REGISTER notice of hearing or opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: (i) supporting the standing of a potential party identified by name and address; and (ii) describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).

[2] Any motion for Protective Order or proposed Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012, 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and proposed Non-Disclosure Agreement or Affidavit. Deadline for applicant/licensee to file proposed Non-Disclosure Agreement or Affidavit for SUNSI.
A	If access is granted: issuance of presiding officer or other designated officer decision on motion for Protective Order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Agreements or Affidavits. Access provided to SUNSI consistent with decision issuing the Protective Order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or notice of opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2026–22395 Filed 11–2–26; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2027–21 and K2027–22; MC2027–22 and K2027–23; MC2027–23 and K2027–24; MC2027–24 and K2027–25]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 6, 2026.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Public Proceeding(s)
III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).:* MC2027–24 and K2027–25; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 1122 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 29, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christoper Mohr; Comments Due: November 6, 2026.

III. Summary Proceeding(s)

1. *Docket No(s).:* MC2027–21 and K2027–22; *Filing Title:* USPS Request to Add New Mid-Market Standardized Distinct Product, PM–GA Contract 1119, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 29, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

2. *Docket No(s).:* MC2027–22 and K2027–23; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 1120, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 29, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

3. *Docket No(s).:* MC2027–23 and K2027–24; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 1121, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 29, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

This Notice will be published in the **Federal Register**.

Danielle LeFlore,

Legal Assistant.

[FR Doc. 2026–22409 Filed 11–2–26; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Sunshine Act Meetings

TIME AND DATE: Monday, November 9, 2026, at 9:00 a.m.; Tuesday, November 10, 2026, at 10:00 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, in the Benjamin Franklin Room.

STATUS: Monday, November 9, 2026, at 9:00 a.m.—Closed. Tuesday, November 10, 2026, at 10:00 a.m.—Open.

MATTERS TO BE CONSIDERED:

Meeting of the Board of Governors

Monday, November 9, 2026, at 9:00 a.m. (Closed)

1. Strategic Matters.
2. Financial and Operational Matters.
3. Executive Session.
4. Compensation and Personnel Matters.
5. Administrative Items.

Tuesday, November 10, 2026, at 10:00 a.m. (Open)

1. Remarks of the Chairwoman of the Board of Governors.
2. Remarks of the Postmaster General and CEO.
3. Approval of the Meeting Minutes.
4. Election of the Chairman.
5. Election of the Vice Chairman.
6. Committee Reports.
7. Financial Matters.
   a. FY2026 Annual Financial Report.
   b. FY2026 10K and Financial Statements.
   c. FY2026 Annual Report to Congress.
   d. FY2027 Integrated Financial Plan and Liquidity Outlook.
   e. Authorization to Borrow Money and Issue Obligations.
   f. FY2028 Congressional Reimbursement Request.
8. Annual Service Performance Report.
9. Approval of the February 2027 Open Meeting Agenda.
10. Adjournment

A public comment period will begin immediately following the adjournment of the open session. During the public comment period, members of the public present at the meeting may comment on any item or subject listed on the open session agenda. Those wishing to speak in person must register in advance. Speakers must register online at *https://www.surveymonkey.com/r/bog-11-10-2026.* Each registered speaker will have two (2) minutes for comment.

Participants who wish to speak in person during the public comment period must register by Monday, November 9, 2026, at 8:00 a.m. ET. Individuals who submit written comments in advance will have their comments read at the meeting, with recitation limited to two (2) minutes per written submission. Written submissions to be read must relate to one or more items or subjects listed on the open session agenda. Written comments must be received by close of business Friday, November 6, 2026.

Comments may be emailed or mailed to the Office of the Board of Governors using the following contact information: *Email: BOG-inquiries@usps.gov. Mail:* Office of the Board of Governors, USPS Headquarters, 475 L'Enfant Plaza SW, Washington, DC 20260–0004.

Participation in the public comment period is governed by 39 CFR 232.1(n).

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the November 9 meeting may be closed under the Government in the Sunshine Act, 5 U.S.C. 552b.

CONTACT PERSON FOR MORE INFORMATION: Lucy C. Trout, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Lucy C. Trout,

Secretary.

[FR Doc. 2026–22393 Filed 10–30–26; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–11445; File No. 4–931]

Potential Designation of Passage of an Accredited Investor Exam To Be Developed by FINRA as Qualifying Natural Persons for Accredited Investor Status

Correction

In notice document 2026–20310 beginning on page 63344 in the issue of Monday, October 5, 2026, make the following correction:

1. On page 63336, in the first column, the **ADDRESSES** section is corrected to read as follows:

''**ADDRESSES:** Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/comments/4-931/potential-designation-passage-accredited-investor-exam-be-developed-finra-qualifying-natural-persons*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number 4–931 on the subject line. To submit a comment to more than one file, please include each file number on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number 4–931. To submit a comment to more than one file, please refer to each file number. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all submitted comments on its website (*https://www.sec.gov/rules-regulations/public-comments/4-931*). Do not include personally identifiable information in submissions; you should submit only information that you wish to make available publicly. The Commission may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.''

[FR Doc. C1–2026–20310 Filed 11–2–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106772; File No. SR–NYSEARCA–2026–106]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List Shares of the Bitwise 10 Crypto Index ETF Under NYSE Arca Rule 8.201–E (Generic)

October 29, 2026.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 21, 2026, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to change the manner in which the shares of the Bitwise 10 Crypto Index ETF (the ''Fund'') are listed and traded on the Exchange. The proposed rule change is available on the Exchange's website at *www.nyse.com* and at the principal office of the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change the manner in which the shares of the Fund (''Shares'') are listed and traded on the Exchange. The Shares were originally approved to list and trade on the Exchange pursuant to Rule 8.500–E. The Exchange now proposes to list and trade Shares of the Fund on the Exchange pursuant to Rule 8.201–E (Generic).

The Commission approved the listing and trading of shares of the Fund (the ''Shares'') on the Exchange under Rule 8.500–E on July 22, 2025.[4] Rule 8.500–E governs the listing and trading of Trust Units, which are securities issued by a trust, limited liability company, or other similar entity that, if applicable, is constituted as a commodity pool and that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, commodities, and/or securities.

On July 28, 2026, the Commission approved a proposed rule change to amend Rule 8.201–E (Generic).[5] Rule 8.201–E (Generic), as amended, allows for up to 15% of a trust's net asset value (NAV) to consist of digital commodities or securities that do not independently meet the core generic eligibility criteria; adds ''digital commodity'' [6] as a defined term; and allows for actively managed Commodity-Based Trust Shares.[7]

The Exchange proposes to now list and trade the Shares of the Fund pursuant to the generic listing standards set forth in Rule 8.201–E (Generic), as amended, which would permit the Fund to operate in reliance on the generic listing standards in Rule 8.201–E (Generic), as amended, instead of the terms of the Original Approval Order. The Exchange represents that the Shares will meet the requirements of Rule 8.201–E (Generic), as amended, on an initial and continued listing basis. In addition, the Exchange will comply with the requirements of Rule 19b–4(e) to list and trade Shares of the Fund on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) [8] of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

[4] *See* Securities Exchange Act Release No. 103531 (July 22, 2025), 90 FR 35339 (July 25, 2025) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend NYSE Arca Rule 8.500–E (Trust Units) and To List and Trade Shares of the Bitwise 10 Crypto Index ETF Under Amended NYSE Arca Rule 8.500–E (Trust Units)) (the ''Original Approval Order'').

[5] *See* Securities Exchange Act Release No. 106001 (July 28, 2026), 91 FR 48462 (July 31, 2026) (SR–NYSEARCA–2026–42) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201–E (Generic) Commodity-Based Trust Shares).

[6] Under Rule 8.201–E(c)(4), the term ''digital commodity'' means a commodity that is a digital asset and is intrinsically linked to and derives its value from the programmatic operation of a functional crypto system, as well as supply and demand dynamics, rather than from the expectations of profits from the essential managerial efforts of others.

[7] Commodity-Based Trust Shares are securities issued by a trust, limited liability company, partnership, or other similar entity (''Trust'') that, if applicable, is operated by a registered commodity pool operator, and is not registered as an investment company; that, consistent with the Trust's investment objective and policies, holds (A) one or more commodities or commodity-based assets, and (B) in addition to such commodities or commodity-based assets, may hold securities, cash, and cash equivalents; is issued by a Trust in a specified aggregate minimum number in return for a deposit of (A) a specified quantity of the underlying commodities, commodity-based assets, securities, cash, and cash equivalents or (B) a cash amount with a value based on the next determined NAV per Trust share; and when aggregated in the same specified minimum number, may be redeemed at a holder's request by a Trust which will deliver to the redeeming holder (A) the specified quantity of the underlying commodities, commodity-based assets, securities, cash, and cash equivalents or (B) a cash amount with a value based on the next determined NAV per Trust share.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(5).

and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would allow the Fund to be listed and traded under Rule 8.201–E (Generic), as amended, instead of Rule 8.500–E. The proposed change would permit the Fund to operate in reliance on the generic listing standards in Rule 8.201–E (Generic), as amended, instead of the terms of the Original Approval Order, thereby facilitating the listing and trading of an exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange represents that the Shares will meet the requirements of Rule 8.201–E (Generic), as amended, on an initial and continued listing basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. As discussed above, the proposed change is intended to facilitate the initial and continued listing and trading of the Shares on the Exchange, thereby promoting competition among exchange-traded products to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2026–106 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2026–106. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2026–106 and should be submitted on or before November 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–22374 Filed 11–2–26; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 36374; File No. 812–16042]

Emery Partners Income Credit Strategies Fund, et al.

October 29, 2026.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (''BDCs''), closed-end management investment companies, and open-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Emery Partners Income Credit Strategies Fund, Emery Partners LLC and EP Alternatives LP.

FILING DATES: The application was filed on June 9, 2026, and amended on September 24, 2026.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the

request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. The email should include the file number referenced above. Hearing requests should be received by the Commission by 5:30 p.m., Eastern Time, on November 23, 2026, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: John F. Ramirez Practus, LLP, *john.ramirez@practus.com* and Richard Blair, Emery Partners LLC c/o Emery Partners Income Credit Strategies Fund, *rblair@emerypartnersllc.com.*

FOR FURTHER INFORMATION CONTACT: Matthew Cook, Branch Chief, or Laura L. Solomon, Senior Counsel at (202) 551–6720 or *IMOCC@sec.gov* (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' amended application, filed September 24, 2026, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system.

The SEC's EDGAR system may be searched at *https://www.sec.gov/search-filings.* You may also call the SEC's Office of Investor Education and Assistance at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–22365 Filed 11–2–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106770; File No. SR–NYSE–2026–52]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 2(c)

October 29, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 19, 2026, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 2(c) to restore language inadvertently omitted from the recently adopted definition of ''associated person.'' The proposed rule change is available on the Exchange's website at *www.nyse.com* and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 2 (''Member,'' ''Membership,'' ''Member Firm,'' etc.) to restore language inadvertently omitted from the proposed definition of ''associated person'' in a recent rule filing.[5] More specifically, the proposed change is a technical amendment that would ensure that the persons encompassed by the ''approved person'' category that the Exchange recently filed to delete are captured by the definition of ''associated person'' in Rule 2(c) for jurisdictional and all other applicable Exchange rules. The proposed rule change is not intended to effect any substantive change to the scope of the Exchange's jurisdiction.

Background and Proposed Rule Change

On September 18, 2026, the Exchange filed an immediately effective rule change to (1) eliminate the ''approved person'' registration category as no longer necessary, (2) adopt a new definition of ''associated person'' in Rule 2(c) based on the definition of associated person in Rule 1011(b) of the Financial Industry Regulatory Authority, Inc. (''FINRA'') and elements of the current definition of approved person, and (3) make related technical and conforming changes.[6] The Approved Person Filing is scheduled to become operative on October 18, 2026.[7]

As described in the Approved Person Filing, the Exchange did not intend to expand or narrow the scope of its jurisdiction. Rather, the proposal was designed to ensure that all persons currently encompassed by the approved person category would continue to be covered under the proposed definition of ''associated person.'' Specifically, the filing stated that proposed Rule 2(c)(3) would include the existing categories of approved persons: (i) persons that control a member organization; (ii) persons engaged in a securities or kindred business that is controlled by a member or member organization; and

[5] *See* note 4, *infra.*

[6] *See* Securities Exchange Act Release No. 106566 (October 1, 2026), 91 FR 63616 (October 6, 2026) (SR–NYSE–2026–47) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delete the Approved Person Registration Category and Adopt a New Definition of Associated Person) (the ''Approved Person Filing'').

[7] The Approved Person Filing was filed on September 18, 2026 and, by its terms, does not become operative for 30 days after the date of filing. Accordingly, the filing is scheduled to become operative on October 18, 2026.

(iii) U.S. registered broker-dealers under common control with a member organization. The filing further explained that the proposed definition of ''Control Person'' was intended to encompass those same categories.[8]

The Exchange has since determined that the text of proposed Rule 2(c)(3), as filed, inadvertently omitted the clause covering persons engaged in a securities or kindred business that is controlled by a member or member organization. That clause appears in the Exchange's current approved person definition and was intended to be carried forward without substantive change. Consequently, the text of proposed Rule 2(c)(3) is inconsistent with both the description of the proposal and the Exchange's stated intent in the Approved Person Filing, which was to preserve, rather than modify, the existing scope of Exchange jurisdiction. This proposed rule change corrects that inadvertent omission and conforms the rule text to the proposal as described in the Approved Person Filing.

The Exchange accordingly proposes to amend Rule 2(c)(3) to add the phrase ''a person engaged in a securities or kindred business that is controlled by a member or member organization,'' immediately after ''controlled by a member organization,''. As amended, Rule 2(c)(3) would provide that an associated person includes:

(3) any person (excluding a governmental entity) directly or indirectly controlling or controlled by a member organization, *a person engaged in a securities or kindred business that is controlled by a member or member organization,* or a U.S. registered broker-dealer under common control with a member organization (a ''Control Person'').

No other changes are proposed to Rule 2.

The Exchange proposes that this proposed rule change become operative on the same date as the Approved Person Filing, and therefore requests that the Commission waive the 30-day operative delay so that this proposed rule change may become operative concurrently with the Approved Person Filing and ensure that the rule text accurately reflects the proposal as originally described before the Approved Person Filing takes effect.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the Exchange believes that the proposed technical correction would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that the text of Rule 2(c) accurately reflects the categories of persons described in the Approved Person Filing, which are the categories the Exchange has treated as within its jurisdiction under the current approved person definition. Restoring the omitted clause would eliminate potential ambiguity as to whether persons engaged in a securities or kindred business controlled by a member or member organization are Control Persons and associated persons under Exchange rules. The Exchange believes this clarity would preserve its ability to exercise jurisdiction over those persons and would thereby protect investors and the public interest.

The Exchange further believes that the proposed change is consistent with the Act because it does not alter the approach described in the Approved Person Filing of defining associated person by reference to FINRA Rule 1011(b) and the definition of associated person of a broker or dealer in Section 3(a)(18) of the Act. The proposed change would simply conform the rule text to the scope of the proposal as described in that filing.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather concerned with restoring language so that Rule 2(c) conforms to the Approved Person Filing, and it would apply to all member organizations in the same manner.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal can become effective upon filing. The Exchange states that the proposal does not significantly affect the protection of investors or the public interest because it is a technical correction that conforms the text of Rule 2(c) to the Approved Person Filing and does not change the persons described in that filing or the scope of the Exchange's jurisdiction. The Exchange further states that it does not believe the proposed rule change will impose a significant burden on competition because it would apply to all member organizations in the same manner. Further, the Exchange states that it believes waiver of the operative delay is consistent with the protection of investors and the public interest because it would put the corrected text of Rule 2(c) in place when the new definition takes effect, which would

[8] *See* Approved Person Filing, 91 FR at 63618, 63622.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

avoid a period in which the rule text does not match the persons described in the Approved Person Filing, and therefore would reduce the potential for investor confusion. For these reasons, and because the proposal does not raise any novel legal or regulatory issues, the Commission finds that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2026–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2026–52. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2026–52 and should be submitted on or before November 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–22375 Filed 11–2–26; 8:45 am]

BILLING CODE 8011–01–P

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106769; File No. SR–TXSE–2026–041]

Self-Regulatory Organizations; Texas Stock Exchange LLC; Notice of Filing, and Order Granting Accelerated Approval of, a Proposed Rule Change To Amend Rule 17.111(d) (Commodity-Based Trust Shares)

October 29, 2026.

On October 16, 2026, Texas Stock Exchange LLC (''TXSE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder (''Rule 19b–4''),[2] a proposed rule change to amend TXSE Rule 17.111(d) to modify the generic listing standards for Commodity-Based Trust Shares. The proposed rule change is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change (the ''Proposal''), on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend TXSE Rule 17.111(d), which governs the listing and trading of Commodity-Based Trust Shares. The Exchange proposes to adopt generic listing standards that would permit the Exchange to list and trade Commodity-Based Trust Shares pursuant to Rule 19b–4(e) under the Act without submitting a separate proposed rule change under Section 19(b) of the Act for each product. The proposed rule change would, among other things: (1) establish eligibility criteria for commodities, commodity-based assets, and securities held by a Trust; (2) permit up to 15% of the net asset value of the Trust's holdings to consist of certain digital commodities and securities that do not otherwise satisfy the applicable eligibility criteria; (3) permit actively managed Commodity-Based Trust Shares; and (4) establish related disclosure, liquidity, trading halt, firewall, surveillance, and other investor protection requirements. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is available on the Commission's website (*https://www.sec.gov/rules/sro.shtml*) at the Exchange's website (*https://txse.com/rule-filings*), and at the principal office of the Exchange

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

TXSE Rule 17.111(d) currently governs the listing and trading of Commodity-Based Trust Shares on the Exchange. Under the existing rule, the Exchange is required to submit a separate proposed rule change pursuant to Section 19(b) of the Act before listing Commodity-Based Trust Shares.[3] The Exchange proposes to amend Rule 17.111(d) to establish generic listing standards that would permit the Exchange to list and trade Commodity-Based Trust Shares that satisfy the requirements of Rule 17.111(d) pursuant to Rule 19b–4(e) under the Act. Commodity-Based Trust Shares that do not satisfy the applicable generic listing standards could continue to be listed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* TXSE Rule 17.111(d)(3).

pursuant to a separate proposed rule change under Section 19(b) of the Act.

Background

The proposed standards are substantially similar to generic listing standards previously approved by the Commission for Nasdaq, Cboe BZX, and NYSE Arca.[4] In July 2026, the Commission approved amendments to Nasdaq's generic listing standards that, among other things, permit up to 15% of the net asset value (''NAV'') of a Trust's holdings to consist of certain digital commodities and securities that do not otherwise satisfy the applicable generic eligibility criteria, add a definition of ''digital commodity,'' and permit actively managed Commodity-Based Trust Shares, subject to additional safeguards. The Commission subsequently approved substantially similar amendments for NYSE Arca and Cboe BZX and materially identical amendments for Nasdaq Texas.[5] The Exchange's proposal incorporates both the original generic listing standards and the subsequent amendments into Rule 17.111(d), with changes necessary to conform the Exchange's existing rule structure, definitions, and cross-references.

Proposal

The Exchange proposes to amend Rule 17.111(d) to permit the Exchange to list and trade Commodity-Based Trust Shares that satisfy the requirements of Rule 17.111(d) pursuant to Rule 19b–4(e) under the Act. Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization is not deemed a proposed rule change pursuant to Rule 19b–4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the self-regulatory organization's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class.[6]

Consistent with the Commission-approved generic listing standards, the Exchange would retain the ability to submit a proposed rule change pursuant to Section 19(b) of the Act to list and trade Commodity-Based Trust Shares that do not satisfy one or more of the applicable generic listing standards. The proposed rule would also provide that statements or representations contained in any such proposed rule change concerning (1) the description of the index, Trust holdings, or reference assets; (2) limitations on the index, Trust holdings, or reference assets; (3) the dissemination and availability of the index, Trust holdings, reference assets, or Intraday Indicative Values; or (4) the applicability of Exchange listing rules would constitute continued listing requirements. An issuer would be required to notify the Exchange of any failure to comply with such continued listing requirements. If the Commodity-Based Trust Shares do not satisfy those requirements, the Exchange may suspend trading and will initiate delisting proceedings under the TXSE Rule Series 16.500.

Definitions

The Exchange also proposes to modernize the definition of Commodity-Based Trust Shares in renumbered Rule 17.111(d)(3). As proposed, Commodity-Based Trust Shares could be issued by a trust, limited liability company, partnership, or other similar entity that, if applicable, is operated by a registered commodity pool operator pursuant to the Commodity Exchange Act and is not registered as an investment company under the Investment Company Act of 1940, or a series or class thereof. Consistent with its stated investment objective and policies, a Trust could hold one or more commodities or commodity-based assets and, in addition, securities, cash and cash equivalents. The proposed rule would also retain the existing creation and redemption structure, as expanded to accommodate the broader range of permitted holdings and cash creations and redemptions based on the next determined NAV per Trust share.

The Exchange also proposes to amend the definition of ''commodity'' in Rule 17.111(d)(3)(B) to provide that the term is defined in Section 1a(9) of the Commodity Exchange Act and does not include an ''excluded commodity'' as defined in Section 1a(19) of the Commodity Exchange Act.

Proposed Rule 17.111(d)(3)(C) would define the term ''commodity-based asset'' as any future, option, or swap on a commodity, as defined in proposed Rule 17.111(d)(3)(B).

Proposed Rule 17.111(d)(3)(D) would define the term ''digital commodity'' as a commodity that is a digital asset and is intrinsically linked to and derives its value from the programmatic operation of a functional crypto system, as well as supply and demand dynamics, rather than from the expectation of profits from the essential managerial efforts of others.[7]

Proposed Rule 17.111(d)(3)(E) would define the term ''cash equivalent'' as a short-term instrument with a maturity of less than three months consisting of: (1) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, that are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances; (4) repurchase agreements and reverse repurchase agreements; (5) bank time deposits; (6) commercial paper; and (7) money market funds.

Proposed Rule 17.111(d)(3)(F) would define ''net asset value'' as the value of Commodity-Based Trust Shares used in computing periodically the current price for purposes of creation and redemption of Trust shares and reflecting the current market value of the assets held by the Trust, less expenses and liabilities.

Proposed Rule 17.111(d)(3)(G) would define ''designated contract market'' as a board of trade or exchange that has been designated as a contract market under Section 5 of the Commodity Exchange Act and operates under the regulatory oversight of the Commodity Futures Trading Commission pursuant to Section 5 of the Commodity Exchange Act.

Proposed Rule 17.111(d)(3)(H) would define ''exchange-traded fund'' or ''ETF'' as an open-end management investment company or unit investment trust, as defined in Section 4(2) of the

[4] *See* Securities Exchange Act Release No. 103995 (September 17, 2025), 90 FR 45414 (September 22, 2025) (SR–NASDAQ–2025–056; SR–CboeBZX–2025–104; SR–NYSEARCA–2025–54) (order granting accelerated approval of proposed rule changes, as modified by amendments thereto, to adopt generic listing standards for Commodity-Based Trust Shares) (''Generic Listing Standards Approval Order'').

[5] *See* Securities Exchange Act Release Nos. 105995 (July 27, 2026), 91 FR 48204 (July 30, 2026) (SR–NASDAQ–2026–032) (order granting approval of a proposed rule change, as modified by Amendment No. 1, to amend Nasdaq Rule 5711(d) (Commodity-Based Trust Shares)) (''2026 Nasdaq Approval Order''); 106001 (July 28, 2026), 91 FR 48462 (July 31, 2026) (SR–NYSEARCA–2026–42) (notice of filing of Amendment No. 1 and order granting accelerated approval of a proposed rule change, as modified by Amendment No. 1, to amend NYSE Arca Rule 8.201–E (Generic) Commodity-Based Trust Shares); 106011 (July 29, 2026), 91 FR 48957 (August 3, 2026) (SR–CboeBZX–2026–061) (notice of filing and order granting accelerated approval of a proposed rule change to amend Rule 14.11(e)(4) (Commodity-Based Trust Shares)); 106268 (September 3, 2026), 91 FR 57392 (September 9, 2026) (SR–NasdaqTX–2026–039) (notice of filing and order granting accelerated approval of a proposed rule change to amend Rule 5711(d) (Commodity-Based Trust Shares)).

[6] 17 CFR 240.19b–4(e).

[7] *See* 2026 Nasdaq Approval Order, *supra* note 5. The definition of ''digital commodity'' is substantially identical to the definition approved by the Commission for Nasdaq, NYSE Arca, Cboe BZX, and Nasdaq Texas.

Investment Company Act of 1940, or series or class thereof, the shares of which are listed and traded on a national securities exchange, and that has formed and operates under an exemptive order under the Investment Company Act of 1940 or in reliance on an exemptive rule adopted by the Commission.

Proposed Rule 17.111(d)(3)(I) would define ''Intraday Indicative Value'' as the estimated indicative value of a Trust share based on current information regarding the value of the Trust's underlying assets.

Proposed Rule 17.111(d)(3)(J) would define ''market price'' as either the official closing price of a Trust share or, if it more accurately reflects the market value of a Trust share at the time as of which the Trust calculates current NAV per share, the midpoint between the national best bid and national best offer as of that time.

Proposed Rule 17.111(d)(3)(K) would define ''premium or discount'' as the positive or negative difference between the market price of a Trust share at the time as of which current NAV is calculated and the Trust's current NAV per share, expressed as a percentage of the Trust share's current NAV per share.

Finally, proposed Rule 17.111(d)(3)(L) would define ''Reporting Authority,'' with respect to Commodity-Based Trust Shares, as an institution or reporting service designated by the Exchange or the Trust as the official source for calculating and reporting information relating to the Commodity-Based Trust Shares, including, but not limited to, portfolio information, the amount of any cash distribution to holders, NAV, or other information relating to the issuance, redemption, or trading of the Commodity-Based Trust Shares. A Commodity-Based Trust Share may have more than one Reporting Authority, each performing different functions.

Eligibility Criteria

The proposed eligibility criteria in Rule 17.111(d)(4) would establish the criteria that the holdings of Commodity-Based Trust Shares must satisfy initially and, except as otherwise specified, on a continuing basis. For each commodity held by a Trust, or commodity that underlies a commodity-based asset held by a Trust, at least one of three criteria would be required to be satisfied. Proposed Rule 17.111(d)(4)(A)(i) provides that the commodity could trade on a market that is a member of the Intermarket Surveillance Group (''ISG''), provided that the Exchange may obtain information about trading in the commodity from the ISG member. Proposed Rule 17.111(d)(4)(A)(ii) provides that the commodity could underlie a futures contract that has been made available to trade on a designated contract market for at least six months, provided that the Exchange has a comprehensive surveillance sharing agreement, whether directly or through common membership in ISG, with that designated contract market. Proposed Rule 17.111(d)(4)(A)(iii) provides that on an initial listing basis only, a commodity would satisfy the eligibility criteria if an exchange-traded fund designed to provide economic exposure of no less than 40% of its NAV to that commodity is listed and traded on a national securities exchange.

The proposed eligibility requirements for the commodity or commodity-based asset components held by the Trust in proposed Rule 17.111(d)(4)(A)(i) and (ii) are intended to ensure that the Exchange can monitor trading activity in the underlying commodity market or CFTC regulated futures market through a comprehensive surveillance sharing agreement, thereby facilitating the monitoring for fraud and manipulation. The eligibility requirement in proposed Rule 17.111(d)(4)(A)(iii) is intended to cover underlying commodities that are already substantially investable through existing ETFs, and to prevent regulatory arbitrage between ETPs registered under the Securities Act of 1933 and ETFs registered under the Investment Company Act of 1940.

To the extent a Trust holds securities, proposed Rule 17.111(d)(4)(B) would require each such security to satisfy the applicable equity or fixed income component requirements of Rule 17.135(b)(1)(A) or (B), or, in the case of a listed option, to trade on an ISG market. Those provisions are the Exchange's existing component-security standards for generically listed Managed Fund Shares. The proposed rule therefore would use existing Exchange standards to determine whether securities held by a Trust qualify for purposes of generic listing.

15% Buffer and Digital Commodity

Notwithstanding the foregoing eligibility criteria, proposed Rule 17.111(d)(4)(C) would permit up to 15% of the NAV of a Trust's holdings in the aggregate to consist of (i) digital commodities that do not satisfy the commodity eligibility criteria in Rule 17.111(d)(4)(A), and/or (ii) securities that do not satisfy the securities eligibility criteria in Rule 17.111(d)(4)(B). For purposes of calculating the 15% limitation, any derivative held by the Trust would be calculated based on its gross notional value.

The proposed 15% buffer is limited to digital commodities and securities that do not otherwise satisfy the applicable eligibility criteria and would not constitute a general exception for other non-qualifying assets. Accordingly, at least 85% of the NAV of the Trust's holdings would continue to consist of commodities, commodity-based assets, and securities satisfying the applicable eligibility criteria and/or cash and cash equivalents. The Trust would otherwise remain subject to all applicable requirements of Rule 17.111(d).

In connection with the 15% buffer, the Exchange proposes to define ''digital commodity'' to make clear the types of digital assets that may be included within the buffer. The proposed definition is informed by joint interpretive guidance issued by the Commission and the Commodity Futures Trading Commission in March 2026.[8] The Exchange represents that to the extent legislation is enacted defining ''digital commodity'' or a substantially similar term, the Exchange will submit a rule filing to conform the definition in Rule 17.111(d) to the statutory definition. The proposed limitation would effectively exclude other commodities, such as non-fungible assets or non-fungible collectibles, from the 15% buffer, but would not preclude the Exchange from submitting a separate proposed rule change pursuant to Section 19(b) of the Act to list and trade Commodity-Based Trust Shares holding other commodities. The Exchange notes that generic listing standards are intended to apply to products that were known and contemplated when the standards were adopted and are not intended to encompass novel products or materially distinct structures that were not considered in adopting the standards.

Actively Managed Commodity-Based Trust Shares

The proposed generic listing standards also would permit both passively and actively managed Commodity-Based Trust Shares to qualify for generic listing. Current TXSE Rule 17.111(d) does not contain a generic listing framework or an express requirement that Commodity-Based Trust Shares track a specified reference asset or index. Rather, the existing rule contemplates Commodity-Based Trust Shares issued by a Trust that holds a

[8] *See* ''Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets,'' 91 FR 13714 (March 23, 2026).

specified commodity and requires the Exchange to submit a separate proposed rule change under Section 19(b) of the Act before listing such Shares.

When the Commission initially approved generic listing standards for Commodity-Based Trust Shares for Nasdaq, Cboe BZX, and NYSE Arca in 2025, those standards required the Shares to be designed to reflect the performance of one or more reference assets or an index of reference assets and therefore contemplated passively managed products. In 2026, the Commission approved amendments to those generic listing standards removing that requirement and instead requiring that the Trust's holdings be consistent with its stated investment objective and policies, thereby permitting both passive and actively managed Commodity-Based Trust Shares to qualify for generic listing. Consistent with the current Commission-approved standards, proposed Rule 17.111(d)(3)(A) would adopt the latter formulation. The Commission previously has concluded that the mere addition of active management to a portfolio that otherwise would qualify for generic listing does not affect the portfolio's susceptibility to manipulation or the availability of arbitrage between the product and its underlying portfolio.[9]

In connection with permitting actively managed Commodity-Based Trust Shares, the proposal would adopt additional safeguards designed to ensure that market participants have equal access to information regarding the Trust's portfolio and to protect against the misuse of material non-public information. Proposed Rule 17.111(d)(9)(B) would require the Exchange to halt trading if the Exchange becomes aware that the Trust's NAV or the portfolio information required by Rule 17.111(d)(5)(A) is not disseminated to all market participants at the same time. Trading would remain halted until the applicable information is available to all market participants.

Firewalls and Material Non-Public Information

Proposed Rule 17.111(d)(10) would establish information-barrier and material non-public information protections. If the value of a Commodity-Based Trust Share is based in whole or in part on an index maintained by a broker-dealer, proposed Rule 17.111(d)(10)(A) would require the broker-dealer to erect and maintain a firewall around personnel responsible for maintaining the index or who have access to information concerning changes and adjustments to the index. Proposed Rule 17.111(d)(10)(B) similarly would require any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or makes decisions regarding index composition, methodology, and related matters to implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

In addition, proposed Rule 17.111(d)(10)(C) would require any person associated with, or acting as an agent of, the Trust, including a Reporting Authority, that has access to non-public information regarding the portfolio or changes to the portfolio to be subject to procedures designed to prevent the use and dissemination of material non-public information. Proposed Rule 17.111(d)(10)(D) would impose additional firewall and written-policy requirements where a Trust is affiliated with an entity that has the ability to influence the price or supply of a commodity, or a commodity underlying a commodity-based asset, held by the Trust.

The first two provisions are substantially similar to protections included in the original Commission-approved generic listing standards, while the latter provisions provide additional protection against the potential misuse of material non-public information relating to an actively managed portfolio.[10]

These safeguards are consistent with the additional protections the Commission approved when permitting actively managed Commodity-Based Trust Shares under the generic standards. The Commission found that the simultaneous portfolio-information requirement helps ensure transparency regarding the underlying portfolio and reduces the potential for any market participant to obtain an unfair informational advantage.[11]

Disclosure and Liquidity Requirements

Proposed Rule 17.111(d)(5) would require a Trust to make specified information available prominently on a publicly available website free of charge. Before the opening of regular trading on the Exchange, the Trust would be required to disclose, as applicable, identifying information, quantities and percentage weightings for its commodities, commodity-based assets, securities, cash and cash equivalents. The Trust also would be required to provide information concerning its prior-business-day NAV, market price and premium or discount; historical premiums and discounts; spread information; liquidity risk policies and procedures; NAV methodology; prior-day trading volume; and effective prospectus.

These disclosure requirements are substantially similar to those approved by the Commission as part of the original generic listing standards and are designed to provide investors and market participants with information regarding the Trust and its holdings that is relevant to the pricing and trading of the Commodity-Based Trust Shares.[12]

Proposed Rule 17.111(d)(6) would prohibit a generically listed Trust from seeking, directly or indirectly, investment returns corresponding to a specified multiple of, or an inverse or multiple-inverse relationship to, an index, benchmark or reference value over a predetermined period. Proposed Rule 17.111(d)(7) also would require a Trust to maintain written liquidity risk policies and procedures if less than 85% of its assets are readily available on a daily basis to meet redemption requests. Such policies and procedures would be required to be reviewed at least annually and to address, among other things, the Trust's investment strategy and asset liquidity under normal and stressed conditions, available cash and funding sources, and assets that are segregated, pledged, encumbered or otherwise restricted. For purposes of this requirement, an asset would be deemed not readily available to meet redemption requests if it is segregated, pledged, hypothecated, encumbered, or otherwise restricted or prevented from being liquidated, sold, transferred, or assigned within one business day. The Commission previously found that substantially similar requirements promote effective liquidity risk management, reduce the risk that a Trust will be unable to meet redemption obligations, and provide investors with relevant information to assess the characteristics and risks of the Commodity-Based Trust Shares.[13]

[9] *See* 2026 Nasdaq Approval Order, *supra* note 5, 91 FR at 48206.

[10] *See* Generic Listing Standards Approval Order, *supra* note 4; 2026 Nasdaq Approval Order, *supra* note 5, 91 FR at 48206–07.

[11] *See* 2026 Nasdaq Approval Order, *supra* note 5, 91 FR at 48207.

[12] *See* Generic Listing Standards Approval Order, *supra* note 4, 90 FR at 45420 (finding that the website disclosure requirements facilitate transparency with respect to Commodity-Based Trust Shares and diminish the risk of manipulation or unfair informational advantage).

[13] *See* Generic Listing Standards Approval Order, *supra* note 4, 90 FR at 45420.

Initial and Continued Listing

Proposed Rule 17.111(d)(8) would establish initial and continued listing requirements for Commodity-Based Trust Shares. On an initial basis, the Exchange would establish a minimum number of Commodity-Based Trust Shares required to be outstanding at the commencement of trading and each Trust would be required to have a stated investment objective that it follows under normal market conditions. On a continuing basis, the Exchange would maintain surveillance procedures for Commodity-Based Trust Shares listed under the rule and would consider suspension and initiate delisting proceedings upon the occurrence of specified events. Those events include failure to satisfy applicable minimum holder, shares-outstanding or market-value requirements; failures involving dissemination of applicable underlying reference values or the Intraday Indicative Value; failure to calculate or make NAV available as required; failure to provide the website disclosures required by Rule 17.111(d)(5); failure to comply with representations made in a product-specific Section 19(b) filing; or failure to maintain another requirement of Rule 17.111(d).

Trading Halts

Proposed Rule 17.111(d)(9) would establish trading halt provisions corresponding to those continued listing requirements. The Exchange could halt trading upon interruptions involving required reference-asset or index information, the Intraday Indicative Value, or required website disclosures and would be required to halt no later than the beginning of the following trading day if an applicable interruption persists. As discussed above, the proposal also would require an immediate halt if the Exchange becomes aware that NAV or the portfolio information required by Rule 17.111(d)(5)(A) is not available to all market participants at the same time. Commodity-Based Trust Shares trading on the Exchange pursuant to unlisted trading privileges would remain subject to Rule 11.020H.

Upon termination of a Trust, the Commodity-Based Trust Shares issued in connection with such Trust would be removed from Exchange listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

Other Conforming Changes

The Exchange also proposes to amend the applicability provisions of Rule 17.111(d)(2) to remove the existing reference to the Trust Issued Receipts rules and to clarify that Commodity-Based Trust Shares are included within the definition of ''security'' or ''securities'' under the Exchange LLC Agreement and TXSE Rules and are subject to the Exchange's existing rules governing the trading of equity securities. This change reflects the broader range of entity structures and holdings permitted under the proposed generic listing standards.

Finally, the Exchange proposes several conforming amendments necessary to implement the generic listing framework. The Exchange proposes to eliminate existing Rule 17.111(d)(5), which contemplates the designation of an individual underlying commodity for each series of Commodity-Based Trust Shares, and to eliminate the existing provisions concerning the stated term of a Trust, qualifications and changes of trustee, and voting rights. Those provisions reflect the narrower structure contemplated by the existing rule and are no longer necessary in light of the broader range of entities and holdings permitted under the proposed generic standards.

The Exchange proposes to modernize the Market Maker account provisions to apply to accounts involving underlying commodities, commodity-based assets and applicable derivatives and to retain the Exchange's books-and-records authority with respect to such activity. The proposal would retain the existing limitation-of-liability provision, with conforming renumbering, and would revise the Supplementary Material to remove the statement that a Commodity-Based Trust Share is a Trust Issued Receipt holding a specified commodity, renumber the existing prospectus and trading-hours provisions, and add an express requirement that an issuer promptly notify the Exchange of a failure to comply with the continued listing requirements.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and specifically with the objectives of Section 6(b)(5),[15] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes the proposal is consistent with the requirement of Section 6(b)(5) that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendments to Rule 17.111(d) are designed to prevent fraudulent and manipulative acts and practices because the proposed rule establishes specific initial and continued listing standards, asset eligibility criteria, disclosure requirements, surveillance-related requirements, trading halt provisions, liquidity standards, and information-barrier protections applicable to Commodity-Based Trust Shares. The proposed generic listing framework is substantially similar to standards previously approved by the Commission for other national securities exchanges.[16] Commodity-Based Trust Shares that do not satisfy the applicable generic listing requirements would not be eligible to rely on Rule 19b–4(e), and the Exchange would retain the ability to submit a proposed rule change pursuant to Section 19(b) of the Act to seek approval to list and trade such securities.

The Exchange believes that the eligibility criteria in proposed Rule 17.111(d)(4) are designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. In particular, the criteria applicable to commodities and commodities underlying commodity-based assets are designed to ensure that the Exchange can obtain information regarding trading in such commodities, either through membership in the Intermarket Surveillance Group or an applicable comprehensive surveillance sharing agreement, or, on an initial listing basis, where the commodity is already substantially investable through an exchange-traded fund meeting the requirements of the proposed rule. These criteria would assist the Exchange in monitoring trading in Commodity-Based Trust Shares and in detecting and deterring violations of Exchange rules and applicable federal securities laws. With respect to securities held by a Trust, proposed Rule 17.111(d)(4)(B)

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Generic Listing Standards Approval Order, *supra* note 4; *see also* 2026 Nasdaq Approval Order, *supra* note 5.

would incorporate the Exchange's existing generic component-security standards applicable to Managed Fund Shares and would require listed options to trade on an ISG market. The Commission previously has found substantially similar requirements applicable to component equity and fixed-income securities to be consistent with the Act.[17]

The Exchange will maintain surveillance procedures for Commodity-Based Trust Shares listed pursuant to proposed Rule 17.111(d), consistent with the requirements of Rule 19b–4(e) under the Act. In addition, the eligibility criteria in proposed Rule 17.111(d)(4)(A)(i) and (ii) are designed to ensure that the Exchange can obtain information regarding trading in applicable underlying commodities or commodity futures through the Intermarket Surveillance Group or comprehensive surveillance-sharing agreements, as applicable. The Exchange believes that these surveillance arrangements, together with its surveillance procedures for trading in Commodity-Based Trust Shares, would assist in detecting and deterring fraudulent and manipulative acts and practices.

As discussed above, the Exchange also believes that the proposed 15% buffer in Rule 17.111(d)(4)(C) is consistent with the Act. Under the proposal, at least 85% of the NAV of a Trust's holdings would continue to consist of commodities, commodity-based assets, and securities satisfying the applicable eligibility criteria and/or cash and cash equivalents. The remaining portion would be limited to digital commodities that do not satisfy the applicable commodity eligibility criteria and/or securities that do not satisfy the applicable securities eligibility criteria. By requiring that the primary exposure of Commodity-Based Trust Shares remain in assets that satisfy established eligibility criteria, the Exchange believes that the proposal would provide flexibility for product innovation while maintaining appropriate investor protections and surveillance capabilities.

The Commission previously has approved comparable structures under which at least 85% of an exchange-traded product's investments consisted of assets that did not raise the same fraud and manipulation concerns and concluded that such a threshold would enable adequate surveillance of the shares by the listing exchange.[18] The Commission subsequently approved substantially identical 15% buffers as part of the generic listing standards for Commodity-Based Trust Shares of Nasdaq, NYSE Arca, Cboe BZX, and Nasdaq Texas.[19] The Exchange therefore believes that the proposed 15% limitation appropriately balances flexibility in portfolio construction with the surveillance and investor-protection objectives underlying the generic listing standards.

The Exchange further believes that defining ''digital commodity'' and limiting the non-qualifying commodity portion of the 15% buffer to assets satisfying that definition is consistent with the Act because it clearly delineates the types of digital assets that may be included in the buffer while preserving the ability of the Exchange to submit an individual proposed rule change under Section 19(b) of the Act for novel products or materially distinct structures that fall outside the generic standards. This approach provides specificity regarding the assets eligible for generic treatment while preserving an appropriate regulatory process for products not contemplated by the standards.

The Exchange also believes that permitting actively managed Commodity-Based Trust Shares to qualify for generic listing is consistent with the Act. The Commission previously has approved actively managed Commodity-Based Trust Shares and concluded that the mere addition of active management to a portfolio that otherwise would satisfy applicable generic listing criteria does not affect the portfolio's susceptibility to manipulation or the availability of arbitrage between the product and its underlying portfolio.[20] The Commission further has stated that this principle applies to Commodity-Based Trust Shares and that consistent application of listing standards across products providing economic exposure to the same underlying commodities may promote competition and provide investors with additional investment alternatives.[21]

In connection with permitting actively managed Commodity-Based Trust Shares, the proposal would adopt safeguards regarding the availability of portfolio information and the protection of material non-public information. Proposed Rule 17.111(d)(9)(B) would require the Exchange to halt trading if the Exchange becomes aware that NAV or the portfolio information required by Rule 17.111(d)(5)(A) is not available to all market participants at the same time. This requirement is designed to ensure that market participants have equal access to information concerning the Trust's underlying portfolio that is important to pricing the Commodity-Based Trust Shares and to reduce the potential for any market participant to obtain an unfair informational advantage.

Proposed Rule 17.111(d)(10) also would impose information-barrier and material non-public information protections. The Exchange believes these requirements are designed to prevent fraudulent and manipulative acts and practices and protect investors by establishing barriers against the use or dissemination of material non-public information that could be used to manipulate a series of Commodity-Based Trust Shares. The additional protections applicable to persons with access to non-public portfolio information are substantially similar to protections applicable to other actively managed exchange-traded products and to protections previously approved by the Commission for actively managed Commodity-Based Trust Shares.[22]

The Exchange further believes that the proposed disclosure, liquidity, initial and continued listing, and trading halt requirements are consistent with the protection of investors and the public interest. The website disclosure requirements are designed to provide market participants with information concerning a Trust's holdings, NAV, market price, premiums and discounts, liquidity policies, and other information relevant to the pricing and trading of Commodity-Based Trust Shares. The liquidity risk requirements are designed to address circumstances in which a Trust may not have sufficient assets

[17] *See* Securities Exchange Act Release Nos. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR–NYSEARCA–2015–110) (approving NYSE Arca's generic listing standards for Managed Fund Shares); 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR–BATS–2015–100) (approving BZX's generic listing standards for Managed Fund Shares); 78918 (September 23, 2016), 81 FR 67033 (September 29, 2016) (SR–NASDAQ–2016–104) (approving Nasdaq's generic listing standards for Managed Fund Shares).

[18] *See* Securities Exchange Act Release Nos. 103996 (September 17, 2025), 90 FR 45440, 45443 (September 22, 2025) (SR–NYSEARCA–2024–87); 104212 (November 18, 2025), 90 FR 52724, 52726 (November 21, 2025) (SR–NYSEARCA–2024–98).

[19] *See* 2026 Nasdaq Approval Order, supra note 5; Securities Exchange Act Release Nos. 106001 (July 28, 2026) (SR–NYSEARCA–2026–42); 106011 (July 29, 2026) (SR–CboeBZX–2026–061); 106268 (September 3, 2026) (SR–NasdaqTX–2026–039).

[20] *See* Securities Exchange Act Release Nos. 105582 (May 29, 2026), 91 FR 33252, 33253 (June 3, 2026) (SR–NASDAQ–2025–085); 105681 (June 12, 2026), 91 FR 36629, 36630 (June 17, 2026) (SR–NYSEARCA–2025–77).

[21] *See* 2026 Nasdaq Approval Order, *supra* note 5, 91 FR at 48206–07.

[22] *See* 2026 Nasdaq Approval Order, *supra* note 5, 91 FR at 48206–07; *See also* Securities Exchange Act Release No. 106011 (July 29, 2026) (SR–CboeBZX–2026–061).

readily available to meet redemption requests without significant dilution of remaining shareholders' interests. The initial and continued listing standards, together with the Exchange's surveillance procedures and authority to suspend trading and commence delisting proceedings when applicable requirements are not maintained, are designed to ensure that Commodity-Based Trust Shares remain subject to appropriate standards after commencement of trading. The Commission previously has found substantially similar requirements to be consistent with the Act.[23]

The Exchange also believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market by facilitating the listing and trading of Commodity-Based Trust Shares pursuant to generic listing standards that are substantially similar to standards previously approved by the Commission. The proposal would streamline the current process by eliminating the need for a separate proposed rule change for each qualifying series of Commodity-Based Trust Shares, thereby reducing the time and costs associated with bringing qualifying products to market and providing greater regulatory certainty to issuers, while preserving the applicable listing, disclosure, surveillance, liquidity, trading halt, and information-protection requirements described above.

For the foregoing reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would establish generic listing standards for Commodity-Based Trust Shares substantially similar to those already approved by the Commission for other national securities exchanges, thereby allowing the Exchange to list and trade qualifying products pursuant to Rule 19b–4(e) without submitting a separate proposed rule change for each product. This would reduce the time and costs associated with bringing qualifying products to market and enhance competition among issuers and listing venues.

The proposal would also expand the types of Commodity-Based Trust Shares eligible for generic listing, including actively managed products and products that hold, within the proposed 15% limitation, certain digital commodities or securities that do not otherwise satisfy the applicable eligibility criteria. Such products would remain subject to the Exchange's applicable initial and continued listing, disclosure, surveillance, and other investor-protection requirements. Products that do not satisfy the generic listing standards could continue to be considered pursuant to a separate proposed rule change under Section 19(b) of the Act. Accordingly, the Exchange believes that the proposal would promote competition without imposing an unnecessary burden on intramarket or intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–TXSE–2026–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–TXSE–2026–041. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–TXSE–2026–041 and should be submitted on or before November 24, 2026.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the Proposal is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange.[24] In particular, the Commission finds that the Proposal is consistent with Section 6(b)(5) of the Act,[25] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposal conforms the Exchange's rules to the changes the Commission previously considered and approved for generic listing standards for Commodity-Based Trust Shares.[26] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a national securities exchange shall not be deemed a proposed rule change pursuant to paragraph (c)(1) of Rule 19b–4 [27] if the Commission has approved, pursuant to Section 19(b) of the Act,[28] the exchange's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the exchange has a surveillance program for the product class.[29] The Exchange proposes to adopt a generic listing standards for Commodity-Based Trust Shares to establish eligibility criteria for commodities, commodity-based assets, and securities held by a Trust and establish related disclosure, liquidity, trading halt, firewall, surveillance, and other investor protection requirements that the Commission has previously

[23] *See* Generic Listing Standards Approval Order, *supra* note 4.

[24] In approving the Proposal, the Commission has considered the Proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

[26] *See supra* notes 4–5 and accompanying text.

[27] 17 CFR 240.19b–4(c)(1).

[28] 15 U.S.C. 78s(b).

[29] *See* 17 CFR 240.19b–4(e).

considered and approved in separate Rule 19b–4 filings.

Accordingly, the Proposal fulfills the intended objective of Rule 19b–4(e) by permitting Commodity-Based Trust Shares that satisfy the requirements previously found to be consistent with the Act to commence trading without public comment and Commission approval.[30] The Exchange's ability to rely on Rule 19b–4(e) to list and trade additional Commodity-Based Trust Shares that meet the applicable requirements and minimum standards will reduce the time frame for bringing the shares to market and thereby reduce the burdens on issuers and other market participants, while also promoting competition.[31]

Finally, Commodity-Based Trust Shares listed pursuant to the Proposal would be required to comply with all applicable requirements of TXSE Rule 17.111(d) and be subject to the rules and procedures of the Exchange that currently govern the trading of equity securities on the Exchange.[32] The Exchange would continue to be required to submit a rule filing with the Commission when seeking to list and trade Commodity-Based Trust Shares that do not meet the generic listing standards under TXSE Rule 17.111(d).

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[33] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[34] to approve the Proposal on an accelerated basis.

V. Conclusion

This approval order is based on all of the Exchange's representations and descriptions in the Proposal, which the Commission has evaluated as discussed above. For the reasons set forth above, the Commission finds, pursuant to Section 19(b)(2) of the Act,[35] that the Proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Act.[36]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–TXSE–2026–041) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–22377 Filed 11–2–26; 8:45 am]

BILLING CODE 8011–01–P

[30] The failure of any particular Commodity-Based Trust Shares to satisfy the proposed generic listing standards pursuant to Rule 19b–4(e) would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b) to list and trade those Commodity-Based Trust Shares. *See* TXSE Rule 17.111(d)(1).

[31] TXSE Rule 17.111(d), as modified by the Proposal, requires the Exchange to maintain surveillance procedures for Commodity-Based Trust Shares, consistent with the requirements of Rule 19b–4(e). 17 CFR 240.19b–4(e). *See* TXSE Rule17.111(d)(8)(B).

[32] *See* TXSE Rule 17.111(d)(2).

[33] 15 U.S.C. 78s(b)(2).

[34] 15 U.S.C. 78s(b)(2).

[35] 15 U.S.C. 78s(b)(2).

[36] 15 U.S.C.78f(b)(5).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106764; File No. SR–NasdaqTX–2026–050]

Self-Regulatory Organizations; Nasdaq Texas, LLC; Notice of Filing and Immediate Effectiveness of a Proposal To Amend Equity 4, Rule 4120, To Align It With That of The Nasdaq Stock Market LLC

October 29, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2026, Nasdaq Texas, LLC (''Nasdaq Texas'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 4, Rule 4120, to align it with that of The Nasdaq Stock Market LLC.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaqtx/rulefilings,* and at the principal office of the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

When in September of this year the Exchange updated its rulebook at Equity 1 and Equity 4 to more closely align those rules with the equivalent rules of The Nasdaq Stock Market LLC (''Nasdaq''),[3] in anticipation of the Exchange becoming a primary listing venue in 2027, the Exchange mistakenly copied an obsolete version of Nasdaq Equity 4, Rule 4120.

The Commission had approved the current version of Nasdaq Equity 4, Rule 4120, back in 2022.[4] However, this version of the rule did not become operative until August of this year.[5] This delay in making the 2022 changes operative on Nasdaq led to the Exchange mistakenly copying in its September 2026 filing an obsolete version of Nasdaq Equity 4, Rule 4120. The Exchange proposes to correct this mistake in this filing.

The Exchange proposes to replace in its entirety its current version of Equity 4, Rule 4120, with the version of that rule that is currently found in the Nasdaq rulebook. Therefore, the new

[3] *See* Securities Exchange Act Release No. 106397 (Sept. 16, 2026), 91 FR 59815 (Sept. 21, 2026) (''Notice of Filing and Immediate Effectiveness of a Proposal To Amend the Exchange's Rules at Equity 1 and Equity 4 To Enable the Exchange To Become a Primary Listing Venue'') (File No. SR–NasdaqTX–2026–042).

[4] *See* Securities Exchange Act Release No. 95069 (June 8, 2022), 87 FR 36018 (June 14, 2022) (''Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Modify Equity 4, Rule 4120 To Add Categories of Regulatory and Operational Halts, To Reorganize the Remaining Text of the Rule, and To Make Conforming Changes to Related Rules'') (File No. SR–NASDAQ–2022–017).

[5] *See* Exchange Act Release No. 106139 (Aug. 14, 2026), 91 FR 53677 (Aug. 19, 2026) (''Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 4, Rule 4120 Regarding Trading Halts'') (File No. SR–NASDAQ–2026–064).

version of Nasdaq Texas Equity 4, Rule 4120, would be structured as follows:

1. Section (a) (Definitions) defines certain terms that are used in the rule.

2. Section (b) (Regulatory Halts) establishes the Exchange's authority to initiate regulatory halts or pauses in various circumstances, including: halts provided for by the applicable SIP Plan; discretionary Regulatory Halts relating to issuer information, material news, initial public offerings, index warrants, derivative securities products, foreign securities, market disruptions, and Initial ETP Opens; and mandatory Regulatory Halts relating to dissemination issues for derivative securities products, the Limit Up-Limit Down Mechanism, market-wide circuit breakers, Equity Investment Tracking Stocks and Subscription Receipts, and reverse stock splits.[6]

3. Section (c) (Operational Halts) establishes the Exchange's authority and procedures for initiating and terminating Operational Halts, including: the circumstances in which Nasdaq Texas may declare an Operational Halt, notification to the SIP when Nasdaq Texas has concerns about collecting and transmitting quotation or transaction information or has declared an Operational Halt or suspension, and the procedures for resuming trading when Nasdaq Texas determines that trading may resume in a fair and orderly manner.

The changes that the Exchange would make to the Nasdaq rule to tailor it to the Exchange would be the following:

1. Modify references to the operating hours and trading sessions of the Exchange, so that they correctly reflect those of Nasdaq Texas. This includes not carrying over language in Nasdaq Equity 4, Rule 4120, that pertains to Nasdaq's upcoming transition to trading 23 hours a day, 5 days a week.

2. Eliminate references to a direct listing with capital raise, as that option is not present in the Nasdaq Texas rulebook.

3. Update references to ''Nasdaq'' with ''Nasdaq Texas.''

Additionally, the Exchange will not copy references to the CORE FIX order entry protocol that are currently present in Nasdaq Equity 4, Rule 4120. This is because the Exchange, Nasdaq, and Nasdaq PHLX LLC will be imminently submitting separate filings to abandon their plans to deploy the CORE FIX order entry protocol, due to a lack of interest by exchange participants. Therefore, it makes no sense for the Exchange to copy references to CORE FIX in Nasdaq Equity 4, Rule 4120, that will soon become obsolete.[7]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed rule change will remove impediments to, and perfect the mechanism of, a free and open market and a national market system by aligning the Exchange's rulebook at Equity 4, Rule 4120, with the substantially similar rule of Nasdaq, which was previously approved by the Commission, finding it to be consistent with the Act.

The proposal is also consistent with Section 6(b)(5) because it is designed to promote clarity, consistency, and transparency for Participants, issuers, and market participants by replacing stale rule text with the version of Equity 4, Rule 4120, that reflects the Commission-approved Nasdaq framework and the intervening updates already incorporated into Nasdaq's current operative rule. The Commission previously approved Nasdaq's Rule 4120 framework to add categories of regulatory and operational halts, reorganize Rule 4120, incorporate provisions of the applicable equity data plans, and make conforming changes to related rules. In approving that framework, the Commission recognized that the revisions promote a clear and uniform approach to trading halts, improve coordination and certainty among plan participants and market participants, enhance the resiliency and integrity of market systems, and promote fair and orderly markets and investor protection. Nasdaq Texas's proposal advances those same objectives because it would adopt a substantially similar halt framework while tailoring only the exchange name, trading session terminology, and other conforming elements needed to reflect the Exchange's existing rules and operations. The Exchange therefore believes the proposal will reduce confusion, support consistent cross-market halt and resumption procedures, and help Participants understand when the Exchange may halt, pause, or resume trading and how related rules will operate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will align the Exchange's rulebook at Equity 4, Rule 4120, with the substantially similar rule of Nasdaq. The proposed rule will apply equally to all Participants of the Exchange. The Exchange does not believe the proposed rule change will impose an undue burden on intermarket competition because it is designed to align Nasdaq Texas's rule text with the substantially similar Nasdaq rule and to support harmonized halt and resumption procedures across markets. The proposal also will not impose an undue burden on intramarket competition because it is generally conforming, organizational, or cross-referential in nature and will apply equally to all Participants and market participants subject to the affected rules. The Exchange is not proposing to change the competitive operation of its market or to treat any category of Participant differently; rather, the proposal will make the Exchange's rulebook easier to understand and will reduce the potential for confusion by adopting a framework that the Commission has previously approved for Nasdaq and by tailoring it only as necessary to Nasdaq Texas's naming conventions, trading sessions, and rulebook structure.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[6] The Exchange notes that proposed Rule 4120(b)(1)(C)(ii)(e)(2)(a) references the FLITE protocol in addition to the OUCH protocol for the repricing of limit-priced interest pursuant to the Limit Up-Limit Down Mechanism, which is not assigned a Managed Pegging, Discretionary, or Reserve Order Attribute. Meanwhile, Nasdaq's corresponding provision does not reference FLITE. However, the omission of FLITE in Nasdaq Equity 4, Rule 4120(b)(1)(C)(ii)(e)(2)(a) is an oversight in Nasdaq's rulebook, which that exchange intends to correct imminently, in an upcoming filing to remove references to CORE FIX from its rulebook.

[7] The Exchange notes that its rulebook online, under the heading for Rule 4120, contains the following disclaimer: 'References to ''CORE FIX'' will be implemented in 2026.' However, that is only an online disclaimer that the Exchange did not add to its rule text. That online-only disclaimer will be deleted once the other references to CORE FIX are deleted from the text of Rule 4120, pursuant to this filing.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NasdaqTX–2026–050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NasdaqTX–2026–050. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NasdaqTX–2026–050 and should be submitted on or before November 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–22376 Filed 11–2–26; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #22023 and #22024; SOUTH DAKOTA Disaster Number SD–20030]

Administrative Disaster Declaration of a Rural Area for the State of South Dakota

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of an Administrative disaster declaration of a rural area for the state of South Dakota dated October 29, 2026.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

DATES: Issued on October 29, 2026.

Incident Period: June 28, 2026 through July 3, 2026.

Physical Loan Application Deadline Date: December 28, 2026.

Economic Injury (EIDL) Loan Application Deadline Date: July 29, 2027.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Jennifer Talarico, Office of Disaster Recovery, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the Administrator's disaster declaration of a rural area applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or in person at locally announced locations. For further assistance please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

The following areas have been determined to be adversely affected by the disaster:

Primary County: Hyde.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.750
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Private Non-Profit Organizations with Credit Available Elsewhere	3.625
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Private Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 22023B and for economic injury is 220240.

The state which received an SBA Administrative rural declaration is South Dakota.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery.

[FR Doc. 2026–22394 Filed 11–2–26; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under Office of Management and Budget Review

AGENCY: U.S. Small Business Administration.

ACTION: 30-Day notice; request for comments.

SUMMARY: The Small Business Administration (SBA) will submit the information collection described below to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork

Reduction Act of 1995, as amended, on or after the date of publication of this notice. SBA is publishing this notice to allow all interested members of the public an additional 30 days to provide comments on the collection of information.

DATES: Submit comments on or before December 3, 2026.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number, which are provided below.

FOR FURTHER INFORMATION CONTACT: You may obtain information including a copy of the forms and supporting documents from the Interim Agency Clearance Officer, Shauniece Carter, at (202) 205–6536, or *shauniece.carter@sba.gov,* or from *www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The Office of Investment and Innovation of the SBA is required to examine small business investment companies (SBICs) pursuant to section 310(c) of the Small Business Investment Act of 1958, as amended, 15 U.S.C. 687b(c), and the implementing regulations 13 CFR 107.690 to 107.692. The purpose of the examination as stated in the statute is to determine, in part, whether or not the SBIC has engaged ''solely in lawful activities and those [activities] contemplated'' by title III of the Small Business Investment Act. SBA collects information on Forms 1031 as part of its effort to meet this statutory requirement.

Summary of Information Collection

OMB Control Number: 3245–0078.
Title: Portfolio Financing Report.
Description of Respondents: Small Business Investment Companies (SBICs).
Form Number: Form 1031.
Estimated Annual Respondents: 373.
Estimated Annual Responses: 1,492.
Estimated Annual Hour Burden: 1,492.

Solicitation of Public Comments

SBA invites the public to submit comments, including specific and detailed suggestions on ways to improve the collection and reduce the burden on respondents. Commenters should also address (i) whether the information collection is necessary for the proper performance of SBA's functions, including whether it has any practical utility; (ii) the accuracy of the estimated burdens; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) the use of automated collection techniques or other forms of information technology to minimize the information collection burden on those who are required to respond.

Shauniece Carter,

Interim Agency Clearance Officer.

[FR Doc. 2026–22364 Filed 11–2–26; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2026–0760]

Privacy Act of 1974; System of Records

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, we are issuing public notice of our intent to modify an existing system of records entitled, Master Files of Social Security Number (SSN) Holders and SSN Applications (60–0058), last published on February 20, 2025. We use information in this system to assign SSNs and for a number of administrative and program purposes, as detailed in the PURPOSE section. This notice publishes details of the modified system as set forth below under the caption, **SUPPLEMENTARY INFORMATION**.

DATES: The system of records notice (SORN) is applicable upon its publication in today's **Federal Register**, with the exception of the new routine uses, which are effective December 3, 2026.

We invite public comment on the routine uses or other aspects of this SORN. In accordance with the Privacy Act of 1974, we are providing the public a 30-day period in which to submit comments. Therefore, please submit any comments no later than December 3, 2026.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Head of Privacy and Disclosure Policy, Law and Policy, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, or through the Federal e-Rulemaking Portal at *https://www.regulations.gov.* Please reference docket number SSA–2026–0760. All comments we receive will be available for public inspection at the above address and we will post them to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tristin Dorsey, Government Information Specialist, Disclosure and Data Support, Privacy and Disclosure Policy, Law and Policy, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–1727, email: *LP.PDP.SORN@ssa.gov* and Charlotte Wang, Government Information Specialist, Privacy Implementation Division, Privacy and Disclosure Policy, Law and Policy, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–1727, email: *LP.PDP.SORN@ssa.gov.*

SUPPLEMENTARY INFORMATION: We are modifying the system location to clarify where the agency will maintain records. We are modifying the system manager to clarify the office responsible for maintaining the system. We are expanding the record source categories to include Federal contractors and vendors, as well as existing SSA systems of records such as the Claims Folders System and the Master Beneficiary Record. We are clarifying the language in existing routine uses No. 6, 7, 10, 12, 17, 25, and 45 for easier reading. We are deleting existing routine use No. 2, as it is duplicative. We are adding one new routine use that will permit disclosures to the Department of the Treasury, to review SSA's payment and award eligibility through the Do Not Pay Working System for the purpose of identifying, preventing, or recouping fraud and improper payments when disclosure meets the requirements in 20 CFR 401.150(c).

In addition, we are modifying the notice throughout to correct miscellaneous stylistic formatting and typographical errors of the previously published notice, and to ensure the language reads consistently across multiple systems. We are republishing the entire notice for ease of reference.

In accordance with 5 U.S.C. 552a(r), we have provided a report to OMB and Congress on this modified system of records.

Matthew Ramsey,

Head of Privacy and Disclosure Policy, Law and Policy.

SYSTEM NAME AND NUMBER:

Master Files of Social Security Number (SSN) Holders and SSN Applications, 60–0058

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Social Security Administration, Chief Information Officer, Systems Operations and Hardware Engineering, Robert M. Ball Building, 6401 Security Boulevard, Baltimore, MD 21235–6401.

Information is also located in additional locations in connection with cloud-based services and as backup for business continuity purposes.

SYSTEM MANAGER(S):

Social Security Administration, Head of Income Security Policy, Law and Policy, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1727.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Social Security Act, as amended.

PURPOSE(S) OF THE SYSTEM:

We use information in this system to assign SSNs and for a number of administrative and program purposes, including but not limited to: for various Old Age, Survivors, and Disability Insurance (OASDI), Supplemental Security Income (SSI), and Medicare/Medicaid claims purposes; as a case control number; as a secondary beneficiary cross-reference control number for enforcement purposes; for verification of individual identity factors; and for other claims purposes related to establishing benefit entitlement.

We also use information in this system:

- for the general administration of the Social Security Act to ensure the accuracy of enumeration related information in other SSA systems;
- to prevent the processing of an SSN card application for a person whose application we identified was supported by evidence that either:
  - we suspect may be fraudulent and we are verifying evidence, or
  - we determined to be fraudulent information;
- to record accurate earnings information to the correct individual;
- to prevent issuance of multiple SSNs to a person;
- for resolution of earnings discrepancy cases; and
- for research and statistical activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains a record of each person who has applied for and to whom we have assigned an SSN. This system also contains records of each person who applied for an SSN, but to whom we did not assign one for one of the following reasons: (1) the application was supported by documents that we suspect may be fraudulent and we are verifying the documents with the issuing agency; (2) we have determined the person submitted fraudulent documents; (3) we do not suspect fraud but we need to further verify information the person submitted or we need additional supporting documents; or (4) we have not yet completed processing the application.

CATEGORIES OF RECORDS IN THE SYSTEM:

We collect applications for SSNs. This system contains all of the information we received on the applications for SSNs (*e.g.,* name, date and place of birth, sex identification, both parents' names, reference number, and alien registration number) and all information obtained during the processing of the SSN request. The system also contains:

- changes in the information on the applications the SSN holders submit;
- information from applications supported by evidence we suspect or determine to be fraudulent, along with the mailing addresses of the persons who filed such applications and descriptions of the documentation they submitted;
- cross-references when multiple numbers have been issued to the same person;
- a form code that identifies the Form SS–5 (Application for a Social Security Card Number) as the application the person used for the initial issuance of an SSN, or for changing the identifying information (*e.g.,* a code indicating original issuance of the SSN, or that we assigned the person's SSN through our enumeration at birth program);
- a citizenship code that identifies the number holder's status as a U.S. citizen or the work authorization of a non-citizen;
- a special indicator code that identifies types of questionable data or special circumstances concerning an application for an SSN (*e.g.,* false identity, illegal alien, or scrambled earnings);
- an indication that an SSN was assigned based on harassment, abuse, or life endangerment;
- an indication that a person has filed a benefit claim under a particular SSN; and
- other indicators (*e.g.,* death or fraud) needed to process SSN requests.

RECORD SOURCE CATEGORIES:

We obtain information in this system of records from SSN applicants (or persons acting on their behalf); Federal, State, and local agencies; and Federal contractors and vendors. We also obtain information from this system from additional existing SSA systems of records, such as the Claims Folders System, 60–0089, and Master Beneficiary Record, 60–0090.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

We will disclose records pursuant to the following routine uses; however, we will not disclose any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC), unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To employers (or agents on their behalf) in order to complete their records for reporting wages to us pursuant to the Federal Insurance Contributions Act and section 218 of the Social Security Act.

2. To the Department of Justice (DOJ), for investigating and prosecuting violations of the Social Security Act.

3. To Department of Homeland Security (DHS), upon request, to identify and locate aliens in the United States pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

4. To the Railroad Retirement Board (RRB), for the purpose of administering provisions of the Social Security Act relating to railroad employment and for administering the Railroad Unemployment Insurance Act.

5. To the Department of the Treasury, for:

(a) tax administration as defined in section 6103 of the IRC (26 U.S.C. 6103);

(b) investigating the alleged theft, forgery, or unlawful negotiation of Social Security checks; and

(c) administering those sections of the IRC that grant tax benefits based on support or residence of children. As required by section 1090(b) of the Taxpayer Relief Act of 1997, Public Law 105–34, this routine use applies specifically to the SSNs of parents shown on an application for an SSN for a person who has not yet attained age 18.

6. To a congressional office in response to an inquiry from that office made on behalf of, and at the request of, the subject of the record.

7. To the Department of State (DOS) for administering the Social Security Act in foreign countries through its facilities and services.

8. To the American Institute, a private corporation under contract to DOS, for

administering the Social Security Act in Taiwan through facilities and services of that agency.

9. To the Department of Veterans Affairs (VA), Regional Office, Manila, Philippines, for the administration of the Social Security Act in the Philippines and other parts of the Asia-Pacific region through services and facilities of that agency.

10. To the Department of Labor (DOL) for administering provisions of title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act, and for studies on the effectiveness of training programs to combat poverty.

11. To VA:

(a) to validate SSNs of compensation recipients/pensioners so that VA can release accurate pension/compensation data to SSA for Social Security program purposes; and

(b) upon request, for purposes of determining eligibility for, or amount of VA benefits, or verifying other information with respect thereto.

12. To Federal agencies that use the SSN as a numerical identifier in their record-keeping systems for the purpose of validating SSNs.

13. To DOJ, a court or other tribunal, or another party before such court or tribunal, when:

(a) SSA, or any component thereof; or

(b) any SSA employee in the employee's official capacity; or

(c) any SSA employee in the employee's individual capacity where DOJ (or SSA, where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where we determine the litigation is likely to affect SSA or any of its components, is a party to the litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before the tribunal is relevant and necessary to the litigation, provided, however, that in each case, we determine that such disclosure is compatible with the purpose for which the records were collected.

14. To State audit agencies for the purpose of:

(a) auditing State supplementation payments and Medicaid eligibility considerations; and

(b) expenditures of Federal funds by the State in support of the Disability Determination Services.

15. To the Social Security agency of a foreign country to carry out the purpose of an international social security agreement entered into between the United States and the other country, pursuant to section 233 of the Social Security Act.

16. To Federal, State, or local agencies (or agents on their behalf) for administering income or health maintenance programs, including programs under the Social Security Act. Such disclosures include the release of information to the following agencies, but are not limited to:

(a) RRB, for administering provisions of the Railroad Retirement Act and Social Security Act, relating to railroad employment, and for administering provisions of the Railroad Unemployment Insurance Act;

(b) VA, for administering 38 U.S.C. 1312, and upon request, for determining eligibility for, or amount of, veterans' benefits or for verifying other information with respect thereto pursuant to 38 U.S.C. 5106;

(c) DOL, for administering provisions of title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act.

17. To State welfare departments:

(a) pursuant to agreements with us, for the administration of State supplementation payments;

(b) for enrollment of welfare beneficiaries for medical insurance under section 1843 of the Social Security Act; and

(c) for conducting independent quality assurance reviews of SSI beneficiary records, provided that the agreement for Federal administration of the supplementation provides for such an independent review.

18. To third party contacts (*e.g.,* State bureaus of vital statistics (BVS) and DHS) that issue documents to persons when the third party has, or is expected to have, information that will verify documents when we are unable to determine if such documents are authentic.

19. To DOJ, Criminal Division, Human Rights and Special Prosecutions Section, upon receipt of a request for information pertaining to the identity and location of aliens for the purpose of detecting, investigating and, where appropriate, taking legal action against suspected participants in Nazi persecution, genocide, and torture or extra judicial killings in the United States.

20. To the Selective Service System, for the purpose of enforcing draft registration pursuant to the provisions of the Military Selective Service Act (50 U.S.C. App. 462, as amended by section 916 of Pub. L. 97–86).

21. To contractors and other Federal agencies, as necessary, for assisting SSA in the efficient administration of its programs. We will disclose information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

22. To the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906.

23. To the Office of Personnel Management (OPM) upon receipt of a request from that agency in accordance with 5 U.S.C. 8347(m)(3), to disclose SSN information when OPM needs the information to administer its pension program for retired Federal Civil Service employees.

24. To the Department of Education, upon request, to verify SSNs and to disclose citizenship status concerning applicants who apply to postsecondary educational institutions for financial assistance under title IV of the Higher Education Act of 1965 (20 U.S.C. 1091).

25. To student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for us, as authorized by law, and they need access to personally identifiable information (PII) in our records in order to perform their assigned agency functions.

26. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

(a) to enable them to ensure the safety of our employees and customers, the security of our workplace, and the operation of our facilities; or

(b) to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of our facilities.

27. To recipients of erroneous Death Master File (DMF) information, to disclose corrections to information that resulted in erroneous inclusion of persons in the DMF.

28. To State vital records and statistics agencies, the SSNs of newborn children for administering public health and income maintenance programs, including conducting statistical studies and evaluation projects.

29. To State motor vehicle administration agencies (MVA) and to State agencies charged with administering State identification card programs for the public to verify names, dates of birth, and SSNs on those persons who apply for, or for whom the State issues, driver's licenses or State identification cards.

30. To entities conducting epidemiological or similar research

projects, upon request, pursuant to section 1106(d) of the Social Security Act (42 U.S.C. 1306(d)), to disclose information as to whether a person is alive or deceased, provided that:

(a) we determine, in consultation with the Department of Health and Human Services (HHS), that the research may reasonably be expected to contribute to a national health interest;

(b) the requester agrees to reimburse us for the costs of providing the information; and

(c) the requester agrees to comply with any safeguards and limitations we specify regarding re-release or re-disclosure of the information.

31. To DHS and to employers for the administration of the E-Verify Program, pursuant to Public Law 104–208, section 404(e). We will inform DHS and the employer participating in the E-Verify Program that the identifying data (SSN, name, and date of birth) furnished by an employer concerning a particular employee matches, or does not match, the data maintained in this system of records, and when there is such a match, that information in this system of records indicates that the employee is, or is not, a citizen of the United States.

32. To a State Bureau of Vital Statistics (BVS) that is authorized by States to issue electronic death reports when the State BVS requests that we verify the SSN of a person on whom the State will file an electronic death report after we verify the SSN.

33. To the Department of Defense (DOD) to disclose validated SSN information and citizenship status information for the purpose of assisting DOD in identifying those members of the Armed Forces and military enrollees who are aliens or non-citizen nationals who may qualify for expedited naturalization or citizenship processing. These disclosures will be made pursuant to requests made under section 329 of the Immigration and Nationality Act, 8 U.S.C. 1440, as executed by Executive Order 13269.

34. To contractors, cooperative agreement awardees, State agencies, Federal agencies, and Federal congressional support agencies for research and statistical activities that are designed to increase knowledge about present or alternative Social Security programs; are of importance to the Social Security program or the Social Security beneficiaries; or are for an epidemiological project that relates to the Social Security program or beneficiaries. We will disclose information under this routine use pursuant only to a written agreement with us.

35. To State and Territory MVA officials (or agents or contractors on their behalf) and State and Territory chief election officials, under the provisions of section 205(r)(8) of the Social Security Act (42 U.S.C. 405(r)(8)), to verify the accuracy of information the State agency provides with respect to applications for voter registration for those persons who do not have a driver's license number:

(a) when the applicant provides the last four digits of the SSN, or

(b) when the applicant provides the full SSN, in accordance with section 7 of the Privacy Act (5 U.S.C. 552a note), as described in section 303(a)(5)(D) of the Help America Vote Act of 2002. (42 U.S.C. 15483(a)(5)(D)).

36. To the Secretary of HHS or to any State, any record or information requested in writing by the Secretary for the purpose of administering any program administered by the Secretary, if we disclosed records or information of such type under applicable rules, regulations, and procedures in effect before the date of enactment of the Social Security Independence and Program Improvements Act of 1994.

37. To appropriate agencies, entities, and persons when:

(a) SSA suspects or has confirmed that there has been a breach of the system of records;

(b) SSA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, SSA (including its information systems, programs, and operations), the Federal Government, or national security; and

(c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with SSA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

38. To State agencies charged with administering Medicaid and the Children's Health Insurance Program (CHIP) to verify personal identification data (*e.g.,* name, SSN, and date of birth) and to disclose citizenship status information to assist them in determining new applicants' entitlement to benefits provided by the CHIP.

39. To HHS, Centers for Medicare and Medicaid Services (CMS), for the purpose of the administration of Insurance Affordability Programs (IAP) and to identify individuals who qualify for an exemption from the individual responsibility requirement in accordance with the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152). IAPs include a Qualified Health Plan through the Exchange, Advance Payments of the Premium Tax Credit, Cost Sharing Reductions, Medicaid, CHIP, and the Basic Health Program.

40. To the Corporation for National and Community Service, upon request, to verify SSNs and to provide citizenship status as recorded in our records concerning individuals applying to serve in approved national service positions and those designated to receive national service education awards under the National and Community Service Act.

41. To another Federal agency or Federal entity, when SSA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(a) responding to a suspected or confirmed breach; or

(b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

42. To State and local government agencies, in situations involving suspected abuse, neglect, or exploitation of minor children or vulnerable adults, to report suspected abuse or determine a victim's eligibility for services.

43. To a State BVS, when it provided SSA information that an individual was deceased to notify the State of the error in the record so furnished.

44. To the Department of Treasury, for purposes of tax administration, debt collection, and identifying, preventing, and recovering improper payments under federally funded programs and to Federal and State agencies for conducting statistical and research activities, pursuant to sections 202(x) and 1611(e) of the Social Security Act. We will disclose only verified prisoner information (*e.g.,* name, SSN, sex code, and date of birth) under this routine use.

45. To the Office of the President, in response to an inquiry from that office made on behalf of, and at the request of, the subject of the record or a third party acting on the subject's behalf.

46. To HHS, Office of Child Support Enforcement, as required by section 453(e)(2) and (j)(1) of the Social Security Act for the administration of the Federal Parent Locator System.

47. To proper applicants submitting an application for a Social Security Card, when the proper applicants establish that the number holders are physically or mentally unable to file for

a Social Security card on their own behalf and provide evidence of custody or legal relationship for the number holders, we may provide the number holders' SSN.

48. To the U.S. Department of the Treasury, when disclosure of the information is relevant to review SSA's payment and award eligibility through the Do Not Pay Working System for the purposes of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state (meaning a state of the United States, the District of Columbia, a territory or possession of the United States, or a federally recognized Indian tribe) in a state-administered, federally funded program. This routine use will be applied when disclosure meets the requirements in 20 CFR 401.150(c).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

We will maintain records in this system in paper and in electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

This system maintains information about individuals by SSN, name, date of birth, the agency's internal processing reference number, or alien registration number. If we deny an application because the applicant submitted fraudulent evidence, or if we are verifying evidence we suspect to be fraudulent, we will retrieve records either by the applicant's name plus month and year of birth, or by the applicant's name plus the eleven-digit reference number of the disallowed application.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with NARA rules codified at 36 CFR 1225.16, we maintain records in accordance with NARA-approved agency-specific records schedule, N1–47–09–02, item 2, and NARA's General Records Schedule (GRS) 4.2, items 020 and 050, and GRS 5.2, item 010.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

We retain electronic and paper files containing personal identifiers in secure storage areas accessible only by authorized individuals, including our employees and contractors, who have a need for the information when performing their official duties. Security measures include, but are not limited to, the use of codes and profiles, personal identification numbers and passwords, and personal identification verification cards. We restrict access to specific correspondence within the system based on assigned roles and authorized users. We keep paper records in cabinets within secure areas, with access limited to only those employees who have an official need for access in order to perform their duties. We use audit mechanisms to record sensitive transactions as an additional measure to protect information from unauthorized disclosure or modification.

We annually provide authorized individuals, including our employees and contractors, with appropriate security awareness training that includes reminders about the need to protect PII and the criminal penalties that apply to unauthorized access to, or disclosure of, PII (5 U.S.C. 552a(i)(1)). Furthermore, authorized individuals with access to databases maintaining PII must annually sign a sanctions document that acknowledges their accountability for inappropriately accessing or disclosing such information.

RECORD ACCESS PROCEDURES:

Individuals may submit requests for information about whether this system contains a record about them by submitting a written request to the system manager at the above address, which includes their name, SSN, or other information that may be in this system of records that will identify them. Individuals requesting notification of, or access to, a record by mail must include: (1) a notarized statement to us to verify their identity; or (2) must certify in the request that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

Individuals requesting notification of, or access to, records in person must provide their name, SSN, or other information that may be in this system of records that will identify them, as well as provide an identity document, preferably with a photograph, such as a driver's license. Individuals lacking identification documents sufficient to establish their identity must certify in writing that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

CONTESTING RECORD PROCEDURES:

Same as record access procedures. Individuals should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with our regulations at 20 CFR 401.65(a).

NOTIFICATION PROCEDURES:

Same as records access procedures. These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

90 FR 10025 (February 20, 2025), Master Files of SSN Holders and SSN Applications.

[FR Doc. 2026–22356 Filed 11–2–26; 8:45 am]

BILLING CODE 4191–02–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of Federal Advisory Committee Act meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (RRSC) will hold a meeting on November 18 and 19, 2026, regarding TVA's natural resources and stewardship matters in the Tennessee Valley.

DATES: The meeting will be held in Fontana Dam, North Carolina at Fontana Village Wednesday, November 18, 2026, from 12:00 p.m. to 2:30 p.m. E.T. and Thursday, November 19, 2026, from 8:30 a.m. to 12:30 p.m. E.T. RRSC council members are invited to attend the meeting in person. The public is invited to view the meeting virtually or to attend in-person. A one-hour virtual or in-person public listening session will be held November 19, at 9:00 a.m. E.T. A link and instructions to view the meeting will be posted on TVA's RRSC website at *www.tva.gov/rrsc* at least one week prior to the scheduled meeting.

ADDRESSES: The public is invited to view the meeting virtually or attend in person. The in-person meeting will be held at Fontana Village at 180 Welch Rd, Fontana Dam, NC 28733. Members of the public are also invited to speak

either virtually or in person during a public listening session.

FOR FURTHER INFORMATION CONTACT: Bekim Haliti, *bhaliti@tva.gov,* 931–349–1894.

SUPPLEMENTARY INFORMATION: The RRSC is a discretionary advisory committee established under the authority of the TVA in accordance with the provisions of the Federal Advisory Committee Act (FACA).

The meeting agenda includes the following:

Day 1—November 18

1. Welcome and Introductions
2. RRSC and TVA Meeting Update
3. Natural Resource Plan Update
4. TVA 26a Permitting
5. Advice Question Discussion

Day 2—November 19

6. Welcome and Review of Day 1
7. Landowner Update
8. Public Listening Session
9. Advice Question Finalization
10. TVA River Management Update
11. Aquatic Plants Update

The RRSC will hear views of the public by providing a 1-hour public comment session starting November 19 at 9:00 a.m. E.T. Persons who wish to speak virtually must preregister by 5:00 p.m. E.T. Friday, November 13, 2026, by emailing *bhaliti@tva.gov.* Persons wishing to speak in person are requested to register either at the door between 8:30 a.m. and 9:00 a.m. ET on Thursday, November 19, 2026, or in advance by emailing *bhaliti@tva.gov.* Persons registered will be called on during the public listening session to share their views for up to five minutes, depending on number of registrants. Written comments are also invited and may be emailed to *bhaliti@tva.gov.* Anyone needing special accommodations should let the contact below know at least one week in advance.

Dated: October 27, 2026.

Amy Edge,

Designated Federal Officer, Tennessee Valley Authority.

[FR Doc. 2026–22420 Filed 11–2–26; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2026–0100]

Agency Information Collection Activities; Notice and Request for Comment; Click It or Ticket (CIOT) Evaluation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a request for approval of a new information collection.

SUMMARY: The National Highway Traffic Safety Administration invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a new information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval to be conducted as part of an evaluation of the Click It or Ticket (CIOT) high-visibility enforcement campaign.

DATES: Comments must be submitted on or before January 4, 2027.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2026–0100 through any of the following methods:

- *Electronic Submissions:* Go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W58–213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Christine Watson, Ph.D., Office of Behavioral Safety Research (NPD–320), 771–241–3120, *Christine.Watson@dot.gov,* National Highway Traffic Safety Administration, W46–474, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a) whether the proposed collection of information is necessary 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 proposed collection of information, including the validity of the methodology and assumptions used; (c) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Click It or Ticket Evaluation.

OMB Control Number: New.

Form Numbers: NHTSA Form 2188.

Type of Request: Request for approval of a new information collection.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: Three years from date of approval.

Summary of the Collection of Information: NHTSA is seeking approval of this one-time information collection request (ICR) to administer surveys as part of an evaluation of *Click It or Ticket,* a key high-visibility enforcement campaign aimed at increasing seat belt use through highly visible seat belt enforcement combined with communications and outreach strategies. The purpose of the self-report surveys is to measure the reach and awareness of CIOT communication and enforcement efforts and to evaluate the effects of the CIOT campaign on driver knowledge, attitudes, and behaviors related to seat belt use.

The surveys will be administered at three timepoints/waves (before, during, and after the annual national CIOT mobilization, which occurs in May) to English-speaking adults (age 18+) with valid driver's licenses who are members of the Gallup Panel, a probability-based panel with over 100,000 panelists in the 50 States and Washington DC. During each of the three survey waves, data will be collected from 4,800 respondents, with an estimated burden of 15 minutes per respondent (an annual burden of 1,200 hours for 4,800 annual respondents, averaged over the three-year approval period). At each wave, 800 respondents will reside in one of four major metropolitan areas (MSAs) located in four States selected to participate in other components of NHTSA's CIOT evaluation,[1] with 200 respondents per MSA. An additional 4,000 respondents will reside in the rest of the U.S. Participation by respondents will be voluntary. The total annual burden for this information collection is 1,200 hours.

The contractor conducting this information collection is Gallup Inc., subcontracted to toXcel, LLC (Toxcel), NHTSA's prime contractor. Gallup's Institutional Review Board (IRB) will review and approve this data collection prior to fielding. Gallup's IRB meets all Federal requirements in 45 CFR 46, is registered with the Office for Human Research Protections, and has a Federalwide Assurance (FWA00021937). Toxcel also has established a Federalwide Assurance (FWA00022882).

NHTSA will use the information from this collection to produce a technical report that presents the results of the survey and the other components of the CIOT evaluation, as well as a dataset that does not contain any personally identifiable information. No identifying information or individual responses will be reported. The technical report will be shared with State Highway Safety Offices, law enforcement, local governments, policymakers, researchers, educators, advocates, and others who may wish to use the information to support their work.

Description of the Need for the Information and Proposed Use of the Information: NHTSA was established to reduce deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. The agency develops, promotes, and implements effective educational and enforcement programs with the goal of ending preventable tragedies and reducing economic costs associated with vehicle use and highway travel. Seat belt use is a key behavioral area for which NHTSA has developed comprehensive programs to meet its injury reduction goals. The annual CIOT mobilization is a major component of NHTSA efforts in this area. CIOT is a high-visibility enforcement campaign aimed at increasing seat belt use, and ultimately reducing injuries and fatalities, through highly visible seat belt enforcement combined with communications and outreach strategies.

NHTSA has conducted previous evaluations of CIOT, with the most recent evaluation conducted over 12 years ago.[2] As part of a broader effort to gather up-to-date information about CIOT, this survey will provide information about whether, how much, where, for how long, and for whom CIOT improves seat belt use, as well as potential impacts on other driver knowledge, attitudes and behaviors related to seat belt use. These survey results will deliver highly relevant, actionable data on CIOT effectiveness in support of NHTSA's mission to save lives, prevent injuries, and reduce economic costs resulting from traffic crashes.

Affected Public: Participants will be English-speaking licensed drivers aged 18 years and older who live in one of the 50 States or the District of Columbia.

Estimated Number of Respondents: Participation in this study will be voluntary, with 4,800 participants at each of three waves (before, during, and after the annual national CIOT mobilization) selected from the Gallup Panel, a large probability-based panel sample frame. An estimated 13,760 panel members at each wave (41,200 total) will be invited to participate.

Frequency: The study will be conducted once in three waves: before, during, and after the nationwide CIOT mobilization.

Estimated Total Annual Burden Hours: 1,200 hours annually.

This ICR will be conducted in three waves: before, during, and after the national CIOT high-visibility enforcement mobilization. At each survey administration (wave), respondents are expected to take 15 minutes to complete the survey. Table 1 provides an overview of the survey administrations.

TABLE 1—OVERVIEW OF THE SURVEY ADMINISTRATIONS

Survey wave	Total number of respondents	Burden per response (minutes)	Total burden hours
Wave 1 (Before CIOT)	4,800	15	1,200
Wave 2 (During CIOT)	4,800	15	1,200
Wave 3 (After CIOT)	4,800	15	1,200

[1] Other components of the CIOT evaluation include conducting observational surveys of seat belt use at the roadside and conducting process evaluations of the implementation of CIOT enforcement and messaging in the four selected States. The observational surveys of seat belt use conducted as part of the CIOT evaluation only involve direct observation of vehicle occupants at the roadside. The process evaluation of the implementation of CIOT enforcement and messaging in four States will not involve requesting information from more than 9 people or groups. Therefore, these components of the CIOT evaluation do not require PRA clearance.

[2] Nichols, J., Chaffe, R., Solomon, M., & Tison, J. (2016, January). *The Click It or Ticket evaluation* (Traffic Safety Facts Research Note. Report No. DOT HS 812 238). National Highway Traffic Safety Administration.

TABLE 1—OVERVIEW OF THE SURVEY ADMINISTRATIONS—Continued

Survey wave	Total number of respondents	Burden per response (minutes)	Total burden hours
Total	14,400		3,600

NHTSA estimates that each wave will have approximately 4,800 respondents and estimates that it will take approximately 15 minutes for a respondent to complete the survey, with an annual burden of 1,200 hours averaged across the three-year approval period (Table 2).

TABLE 2—ANNUAL BURDEN ESTIMATES

Information collection	Forms	Annual number of respondents	Burden per response (minutes)	Hourly opportunity cost	Opportunity cost per response	Total annual opportunity cost	Total annual burden hours
Survey	NHTSA 2188	4,800	15	$42.88	$10.72	$51,456	1,200

To be eligible, potential respondents must be age 18 or older, reside in the U.S., have access to the internet, be English-speaking, and have a valid U.S. license. However, using demographic information respondents provided when they became Gallup Panel members, Gallup will only send survey invitations to panelists who meet these first four criteria. In addition, survey invitations and notifications sent to Gallup panelists will indicate that respondents must have a driver's license, with about 89 percent of U.S. adults being licensed drivers.[3] Therefore, the number of respondents who read the invitation materials, decide to participate, but ultimately report not having a valid U.S. driver's license is expected to be near zero.

NHTSA estimates the opportunity cost to respondents using a fully-loaded average hourly wage. The May 2024 mean hourly wage for all occupations in the United States was $32.66 per hour.[4] NHTSA adds 31.3 percent to this figure to account for benefits, for a fully-loaded average hourly wage of $42.88.[5] [6] Therefore, NHTSA estimates the annual opportunity cost to be approximately $51,456 ($42.88 × 1,200 = $51,456). Table 2 provides a summary of the estimated annual burden hours and opportunity costs associated with this ICR.

Estimated Total Annual Burden Cost: Participation in this study is voluntary, and there are no costs to respondents beyond the time spent completing the questionnaires.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29A.

Angie Wang,

Acting Associate Administrator, Research and Program Development.

[FR Doc. 2026–22366 Filed 11–2–26; 8:45 am]

BILLING CODE 4910–59–P

[3] Office of Highway Police Information. (2025, January). *Highway statistics 2023*. Federal Highway Administration. *https://www.fhwa.dot.gov/policyinformation/statistics/2023/dl20.cfm*

[4] U.S. Bureau of Labor Statistics. (2025, April). *May 2024 National Occupational Employment and Wage Estimates.* U.S. Bureau of Labor Statistics. *https://data.bls.gov/oes/#/industry/000000.*

[5] *Ditigal.gov.* (n.d.). *How to estimate burden.* U.S. General Services Administration and Office of Management and Budget. *https://pra.digital.gov/burden/estimation/.*

[6] U.S. Bureau of Labor Statistics. (2025, September 12). *Employer costs for employee compensation—June 2025* [News Release]. *https://www.bls.gov/news.release/pdf/ecec.pdf.*

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2026–3004]

Pipeline Safety: LNG Safety Best Practices Workshop Series Presented by the National Center of Excellence for LNG Safety

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Notice of public workshop.

SUMMARY: The National Center of Excellence for Liquefied Natural Gas (LNG) Safety (National LNG Center) will host a series of informational workshops on best practices for LNG safety titled, ''LNG Safety Best Practices Workshop.'' The workshops are free; will be hosted in-person with select hybrid sessions offered virtually; and will require advance registration. Each workshop will be a full day and will cover a variety of best practices each session. PHMSA established the National LNG Center in 2023 pursuant to section 111 of the Protecting Our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2020 (Pub. L. 116–260), which directs the National LNG Center to advance Federal LNG expertise, serve as a repository of best practices, and facilitate collaboration among LNG stakeholders. Consistent with this mandate, the workshop series will bring together representatives from industry, government, academia, emergency response organizations, and other stakeholders to promote information sharing and continuous improvement in LNG safety.

DATES: The inaugural LNG Safety Best Practices Workshop will be held

December 2, 2026 from 8:00 a.m. to 5:00 p.m. CST. Subsequent workshop dates will be announced and posted as they become available at *https://primis-meetings.phmsa.dot.gov/.* Online pre-registration for the LNG Safety Best Practices Workshop opens on Monday, November 2, 2026 and will close on Friday, November 27, 2026.

Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, for the workshop should notify Luciano Vera by phone at 771–233–3278 or by email at *LNGCenter@dot.gov* no later than November 16, 2026. For additional information, see the **ADDRESSES** section of this notice.

ADDRESSES: The LNG Safety Best Practices Workshop will be held in person at the National LNG Center in Lake Charles, Louisiana. The hotel reservation link, workshop agenda, and instructions on how to attend will be published on the public meeting registration page at *https://primis-meetings.phmsa.dot.gov/.*

Presentations: Presentations will be available on the meeting website and on the E-Gov website at *https://regulations.gov* under docket number PHMSA–2026–3004 no later than 30 days following the meeting.

Submitting Comments: You may submit general questions and comments, identified by Docket No. PHMSA–2026–3004 (LNG Safety Best Practices Workshop Series Presented by the National Center of Excellence for LNG Safety), by any of the following methods:

- *E-Gov Website: https://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: 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9:00 a.m. and 5:00 p.m. EST, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251. Docket Management Facility. DOT will not issue confirmation notices for faxed comments.

Instructions: Identify Docket No. PHMSA–2026–3004 at the beginning of your comments. If you submit your comments by mail, please submit two copies. If you wish to receive confirmation that PHMSA received your comments, you must include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

Privacy Act: DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edits, 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.*

FOR FURTHER INFORMATION CONTACT: Luciano Vera, Outreach Coordinator, by telephone at 771–233–3278 or by email at *LNGCenter@dot.gov.*

SUPPLEMENTARY INFORMATION: Building upon the National LNG Center's ''Prioritizing Safety: Best Practices in LNG'' webinar series, the workshops will provide practical learning and direct engagement with subject matter experts on process safety management and best practices at LNG facilities. Hybrid morning sessions will allow both in-person and virtual participation, followed by in-person case studies in the afternoon. Planned agenda topics and the full schedule will be posted to the meeting website.

The workshop directly supports the National LNG Center's congressionally established mission by sharing safety knowledge and best practices, strengthening stakeholder collaboration, and advancing understanding of safe LNG facility operations.

The National LNG Center will use the LNG Safety Best Practices Workshop series to promote information-sharing between LNG industry stakeholders, supporting continuous improvements in LNG facility safety and operational performance while complementing minimum regulatory requirements. The best practices include, but are not limited to, LNG facility management, fire protection and safety, operations, maintenance, system/process design, and other leading industry practices. The best practices may be implemented by various LNG facility types, including, but not limited to, baseload facilities (import/export terminals), peak shavers, satellite, temporary/mobile, transportation fuel, and bunkering.

Identified best practices can be applied in the form of a procedure, technique, process, program, consensus standard, or recommended practice, and may merit consideration by organizations for implementation because they have demonstrated value in improving safety or reliability, in offering superior performance beyond compliance, or in introducing innovative methods to enhance effectiveness. Delivering these practices via workshops enables a formal process of sharing information with LNG stakeholders.[1] Workshops also facilitate broad outreach, interactive questions and answers, and subsequent measurement of impact.

Public Participation: The LNG Safety Best Practices Workshop series will be open to the public via registration. Members of the public who wish to attend must register on the meeting website(s), including their names and organizational affiliation. PHMSA is committed to providing all participants with equal access to these meetings. If you need disability accommodations for the workshop, please contact Luciano Vera by email at *LNGCenter@dot.gov.*

PHMSA is not always able to publish a notice in the **Federal Register** quickly enough to provide timely notification of last-minute changes that impact scheduled meetings. Therefore, individuals should check the meeting website listed in the **ADDRESSES** section of this notice or contact Luciano Vera regarding any possible changes to the LNG Safety Best Practices Workshop.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Thomas Correll,

Associate Administrator for Pipeline Safety.

[FR Doc. 2026–22418 Filed 11–2–26; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2026–3862]

Privacy Act of 1974; System of Records

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the United States Department of Transportation (DOT) proposes a new system of records titled, ''Department of Transportation, Federal Aviation Administration DOT/FAA 860, Unmanned Aircraft System Beyond Visual Line of Sight Operations—Parts 108/146.'' This system of records allows the FAA to collect, use, and maintain

[1] LNG sector stakeholders, as defined in section 111 of the PIPES Act of 2020, are Federal regulatory agencies of jurisdiction, LNG facilities operating in the United States, State governments, Native American Tribes, units of local government, post-secondary educational institutions, labor organizations, and safety organizations.

information from operators, manufacturers and Automated Data Service Providers (ADSPs), to the extent the operator, manufacturer or ADSP is an individual, when requesting authorizations to conduct or support certain beyond visual line of sight operations in the United States national airspace (NAS).

DATES: Submit comments on or before December 3, 2026. The Department may publish an amended Systems of Records Notice (hereafter ''Notice'') in light of any comments received. This new system will be effective immediately. The routine uses will be effective December 3, 2026.

ADDRESSES: You may submit comments identified by docket number DOT–OST–2026–3862 by any of the following methods:

- *Federal e-Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W58–213, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2026–3862. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For questions, please contact: Karyn Gorman, Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; *privacy@dot.gov;* or 202–603–8321.

SUPPLEMENTARY INFORMATION:

Background

The Normalizing Unmanned Aircraft Systems (UAS) Beyond Visual Line of Sight (BVLOS) Operations final rule was issued under the authority of 49 United States Code (U.S.C.). Section 106. The associated rulemaking was issued under the authority described in 49 U.S.C. 44807, *Special authority for certain UAS,* which permitted the FAA Administrator [1] to use a risk-based approach to determine if certain UAS may operate safely in the NAS. Furthermore, the FAA Reauthorization Act of 2024 (section 930 of Pub. L. 118–63) amended 49 U.S.C. chapter 448 by adding § 44811 to require the FAA to establish performance-based regulations for UAS to be used for BVLOS operations. The UAS operations BVLOS regulations established acceptable risk levels for BVLOS operations; standards for remote pilots or UAS operators; an approval or acceptance process for UAS which leveraged special airworthiness certificates (SAC) or a manufacturer declaration of compliance (DOC); operating rules for UAS that were approved or accepted; protocols of networked information; and safety of manned aircraft operating in the NAS. Furthermore, section 932 of the FAA Reauthorization Act of 2024 required procedures, including rulemaking, to approve third-party service suppliers. This included suppliers of UAS Traffic Management (UTM) services to support the safe integration and commercial operations of UAS. The rulemaking and subsequent regulations that are covered by this system of records are within the scope of these authorities.

This rulemaking established parts 108 *Operations of Unmanned Aircraft Systems Beyond Visual Line of Sight,* and 146 *Automated Data Service Providers.* Part 108 established a comprehensive framework enabling routine UAS Operations BVLOS without the need for case-by-case waivers, setting standards for aircraft design, operators, and operational safety. The operators and manufacturers covered by this part can be individuals or businesses. Part 146 established a certification structure for Automated Data Service Providers (ADSPs) that supply the digital traffic management and safety data necessary to support scalable BVLOS activity, including UTM. Like the other groups, ADSPs can be individuals or businesses.

Part 108 introduced two tiers of operating authority: permits for lower-risk, smaller-scale UAS operations and certificates for higher-risk or enterprise UAS operations. To administer this system, the FAA developed an information portal for manufacturers, operators, and ADSPs. Operators must obtain permits or certificates based on operational complexity and report certain data; manufacturers may be required to submit compliance data, including noise and cybersecurity information; and ADSPs must secure both organizational certificates and service-specific authorizations. As a result, the FAA collects identifying and technical data from all the aforementioned participants within the BVLOS ecosystem.

To issue permits/certificates of authorization to conduct certain BVLOS operations in the NAS, the FAA collects contact information (names, physical addresses, email addresses, and telephone numbers) from operators, as well as UAS serial numbers and UAS registration numbers. For a small subset of operators—those who perform package delivery operations—citizenship information is collected and could include birth certificate, passport, or naturalization document, which could include name, parents' names, place of birth, date of birth, certificate of naturalization number/passport number, marital status and photograph. Once submitted, an application identification number (ID) is generated for tracking purposes. If the FAA approves the request, a permit/certificate is generated and includes a permit/certificate number.

The application data for airworthiness acceptance from UAS manufacturers submitting declarations of compliance to the FAA includes manufacturers' contact information (names, physical addresses, email addresses and telephone numbers) and aircraft information (serial number and registration number), among other details. Once an application is submitted, an application ID is generated for tracking purposes. If the FAA approves the request, a waiver number is issued for approved waiver applications. Airworthiness acceptance is tracked by aircraft serial number, while registered manufacturers are tracked by manufacturer's name.

Finally, part 146 introduces the mechanisms and requirements to certify ADSPs and their automated data services. This process requires ADSPs to obtain organizational-level certificates and subsequently obtain authorizations for the individual services they provide. These applicants would also provide their contact information (names, physical addresses, email addresses and telephone numbers). When the applicant initiates an application, an application ID is generated to track it. If the FAA approves the application, a certification number is generated.

[1] *See* section 927 of FAA Reauthorization Act of 2024, Public Law 118–63.

Privacy Act

The Privacy Act (5 U.S.C. 552a) governs how the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A ''System of Records'' is a group of any records under the control of a federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records Notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them and to contest inaccurate information). In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

DOT/FAA 860 Unmanned Aircraft System Beyond Visual Line of Sight Operations—Parts 108/146.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Located in the FAA Cloud Services Amazon Web Services (FCS AWS) East West Public Cloud.

SYSTEM MANAGER(S):

AVS Hub Owner, AFB–260, Federal Aviation Administration, 6961 Flight Road, Riverside, CA 92504; Email: *9-AVS-AFB260-STIM@faa.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. Sect. 106 subtitle I; 49 U.S.C. 44807; 49 U.S.C. 44811; and the FAA Reauthorization Act of 2024 (sections 930 and 932).

PURPOSE(S) OF THE SYSTEM:

To allow the FAA to collect, use, and maintain information from individuals acting as or representing operators, manufacturers, and ADSPs when they request authorizations to conduct or support certain BVLOS operations in the NAS and/or airworthiness acceptance to manufacture compliant UAS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

For part 108, records cover individuals acting as or representing UAS operators requesting a permit or certificate to conduct operations, and individuals acting as or representing manufacturers seeking airworthiness acceptance for UAS. For part 146, records cover individuals acting as or representing the ADSPs, corporate stockholders who own 5% or more of the corporation's total voting stock, non-corporate persons with a financial interest in the entity, and accountable executives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system apply to individuals acting as or representing operators, manufacturers, and ADSPs as follows:

Operators

These records include name, physical address, email address, and telephone number, the address of the principal base of operations, if different from the address provided for contact information, name of the individual who serves as operations supervisor, application ID, permit/certificate number, UAS serial number and UAS registration number. For a small subset of operators who perform package delivery operations, citizenship information is collected and could include birth certificate, passport, or naturalization document, which could include name, parents' names, place of birth, date of birth, certificate of naturalization number/passport number, marital status and photograph.

Manufacturers

These records include the manufacturer's name, physical address, telephone number, email address, application ID, and waiver number; the unmanned aircraft make, model, series, serial number, and date of manufacture.

Automated Data Service Providers

These records include name, physical address, mailing address, telephone number, email address, application ID, certification number and service authorization number; for corporate applicants: name and physical address of each stockholder who owns 5% or more of the total voting stock of the corporation; for non-corporate applicants: name and physical address of each person having a financial interest in the entity; name, mailing address, telephone number and email address of each accountable executive.

RECORD SOURCE CATEGORIES:

Records are obtained from individuals authorized to operate UAS, manufacture UAS, or offer automated data services to UAS operators, as well as FAA personnel logging actions associated with various activities, including, but not limited to, certification, authorization, oversight, and enforcement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to other disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

System-Specific Routine Uses:

1. To the public, in the case of part 108, waiver applications and decisions, including any history of previous, pending, existing, or denied requests for waivers applicable to the UAS at issue for purposes of the waiver, and special provisions applicable to the UAS operation that is the subject of the request. Individual or business names will be shared as needed. Email addresses and telephone numbers will not be disclosed pursuant to this Routine Use. Airspace authorizations that the FAA issues will also not be disclosed pursuant to this Routine Use, except to the extent that an airspace authorization is listed or summarized in the terms of a waiver.

2. To the public, in the case of part 146, the FAA manages a public-facing web page that provides the following information associated with each part 146 certification: (1) the service provider name, (2) the service type of the certification, and (3) the service type and category for each authorized part 146 service associated with the certification.

3. To law enforcement, when necessary and relevant to an FAA enforcement activity.

4. To the National Transportation Safety Board (NTSB) in connection with its investigation responsibilities.

5. To government agencies, whether Federal, State, Tribal, local or foreign, information necessary or relevant to an investigation of a violation or potential violation of law, whether civil, criminal, or regulatory, that the agency is charged with investigating or enforcing; as well as, to government agencies responsible for threat detection in connection with critical infrastructure protection.

6. To the Transportation Security Administration (TSA), when necessary

and relevant to the execution of TSA's duty to impose security measures on related operations, assess security risks, enforce compliance, conduct security threat assessments, and for the purpose of vetting individuals and operators.

Departmental Routine Uses:

7. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

8. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DOT decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

9. A record from this system of records may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

10a. Routine Use for Disclosure for Use in Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof (including a member of the Coast Guard), in his/her official capacity, or (c) Any employee of DOT or any agency thereof (including a member of the Coast Guard), in his/her individual capacity where the Department of Justice has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

10b. Routine Use for Agency Disclosure in Other Proceedings. It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof in his/her official capacity, or (c) Any employee of DOT or any agency thereof in his/her individual capacity where DOT has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

12. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials which are being used, or are expected to be used, to support prosecution or fines against the individual for alleged violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes; release is authorized under 49 CFR 10.35(9).

13. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

14. It shall be a routine use of the information in any DOT system of records to provide to the Attorney General of the United States, or his/her designee, information indicating that a person meets any of the disqualifications for receipt, possession, shipment, or transport of a firearm under the Brady Handgun Violence Prevention Act. In case of a dispute concerning the validity of the information provided by DOT to the Attorney General, or his/her designee, it shall be a routine use of the information in any DOT system of records to make any disclosures of such information to the National Background Information Check System, established by the Brady Handgun Violence Prevention Act, as may be necessary to resolve such dispute.

15a. To appropriate agencies, entities, and persons when (1) DOT suspects or has confirmed that there has been a breach of the system of records; (2) DOT has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOT (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

15b. To another Federal agency or Federal entity, when DOT determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

16. DOT may disclose records from this system, as a routine use, to the Office of Government Information Services for the purpose of (a) resolving disputes between FOIA requesters and Federal agencies and (b) reviewing agencies' policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

17. DOT may disclose records from this system, as a routine use, to contractors and their agents, experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

18. DOT may disclose from this system, as a routine use, records consisting of, or relating to, terrorism information (6 U.S.C. 485(a)(5)), homeland security information (6 U.S.C. 482(f)(1)), or Law enforcement information (Guideline 2 Report attached to White House Memorandum, ''Information Sharing Environment, November 22, 2006) to a Federal, State, local, tribal, territorial, foreign government and/or multinational agency, either in response to its request or upon the initiative of the Component, for purposes of sharing such information as is necessary and relevant for the agencies to detect, prevent, disrupt, preempt, and mitigate the effects of terrorist activities against the territory, people, and interests of the United States of America, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458) and Executive Order 13388 (October 25, 2005).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored in electronic form. Electronic records are stored in a database with appropriate security and access limitation.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records can be accessed by both internal and external users to the FAA upon authentication into the system. Based on their business need, users can retrieve records by application ID, service authorization number, waiver number, certificate/certification number, permit number, name, and email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

FAA is actively working on drafting the appropriate records retention schedule(s) to be submitted to NARA by the latter part of fiscal year 2027. Until these schedules are approved by NARA, all records in this system will be treated as permanent.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT and FAA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of whether this system of records contains information about them may contact the System Manager at the address provided in the section ''System Manager''. When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform to the Privacy Act regulations set forth in 49 CFR part 10. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest the content of any record pertaining to them in the system of records may contact the System Manager and follow the Privacy Act procedures in 49 CFR part 10, subpart E, Correction of Records. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. If your request contests the content of records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

No exemptions claimed.

HISTORY:

None.

Issued in Washington, DC.

Karyn Gorman,

Departmental Chief Privacy Officer.

[FR Doc. 2026–22436 Filed 11–2–26; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Mandatory Contractual Stay Requirements for Qualified Financial Contracts

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, ''Mandatory Contractual Stay Requirements for Qualified Financial Contracts.''

DATES: Comments must be received by January 4, 2027.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0339, 400 7th Street SW, Suite 1E–216, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 1E–216, Washington, DC 20219.
- *Fax:* (571) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0339'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

• *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of the Treasury'' and then click ''submit.'' This information collection can be located by searching OMB control number ''1557–0339'' or ''Mandatory Contractual Stay Requirements for Qualified Financial Contracts.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements, imposed on ten or more persons, that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 generally requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of this collection.

Title: Mandatory Contractual Stay Requirements for Qualified Financial Contracts.

OMB Control No.: 1557–0339.

Type of Review: Regular.

Frequency of Response: On occasion.

Affected Public: A national bank or Federal savings association (FSA) (or any subsidiary of either) that is a subsidiary of a global systemically important bank holding company that has been designated pursuant to 12 CFR 252.82 of the Federal Reserve Board's Regulation YY; a national bank or FSA (or any subsidiary of either) that is a subsidiary of a global systemically important foreign banking organization designated pursuant to 12 CFR 252.87 of the Federal Reserve Board's Regulation YY; a Federal branch or agency (or any U.S. subsidiary of a Federal branch or agency) of a global systemically important foreign banking organization designated pursuant to 12 CFR 252.87 of the Federal Reserve Board's Regulation YY; and any national bank or FSA that is not under a bank holding company and that has more than $700 billion in total assets as reported on its most recent Consolidated Reports of Condition and Income (Call Report).

Abstract: Under 12 CFR part 47, a covered bank is required to ensure that a covered qualified financial contract (QFC) (1) contains a contractual stay-and-transfer provision analogous to the statutory stay-and-transfer provision imposed under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (see 12 U.S.C. 5390(c)(9)–(10)) and in the Federal Deposit Insurance Act (see 12 U.S.C. 1821(e)(8)–(10)) and (2) limits the exercise of default rights based on the insolvency of an affiliate of the covered bank. A covered bank is defined in 12 CFR 47.3(b) as:

• A national bank or FSA that has more than $700 billion in total assets as reported on the national bank's or FSA's most recent Call Report;

• A national bank or FSA that is a subsidiary of a global systemically important bank holding company that has been designated pursuant to § 252.82 of this title (Federal Reserve Board Regulation YY) (12 CFR 252.82);

• A national bank or FSA that is a subsidiary of a global systemically important foreign banking organization that has been designated pursuant to § 252.87 of this title (Federal Reserve Board Regulation YY) (12 CFR 252.87);

• A Federal branch or agency, as defined in subpart B of this chapter (governing Federal branches and agencies), of a global systemically important foreign banking organization that has been designated pursuant to § 252.87 of this title (Federal Reserve Board Regulation YY) (12 CFR 252.87); or

• A subsidiary of a covered bank, except, as defined in 12 CFR 47.3(b)(3), subsidiaries held in satisfaction of debt previously contracted in good faith, a portfolio concern that is controlled by a small business investment company, and certain companies engaged in the business of making public welfare investments.

The requirements are intended to enhance the resilience and the safety and soundness of Federally chartered and licensed financial institutions by addressing concerns relating to the exercise of default rights of certain financial contracts that could interfere with the orderly resolution of certain systemically important financial firms.

Covered banks may comply either by amending the contractual provisions of their QFCs consistent with the requirements of §§ 47.4 and 47.5 within a specified period of time or by adhering to the International Swaps and Derivatives Association 2015 Universal Resolution Stay Protocol or U.S. Protocol (ISDA Protocols). Alternatively, 12 CFR 47.6(b)(1) provides that a covered bank may request that the OCC approve as compliant with the requirements of §§ 47.4 and 47.5 provisions of one or more forms of covered QFCs, or amendments to one or more forms of covered QFCs, with enhanced creditor protection conditions.

In order for the OCC to evaluate a covered bank's request, 12 CFR 47.6(b)(3) requires that the request include (1) an analysis of the proposal that addresses a range of factors laid out in § 47.6(d) that are intended to facilitate the OCC's consideration of whether the proposal would be consistent with the restrictions and the main objectives of the rule; (2) a written legal opinion verifying that the covered bank's proposed provisions or amendments would be valid and enforceable under applicable laws of the relevant jurisdictions, including, in the case of proposed amendments, the validity and enforceability of the proposal to amend the covered QFCs; and (3) any additional information relevant to the OCC's approval that the OCC requests. The OCC will then use the information collected to determine whether the covered bank's proposed alternative creditor protection conditions comply with the requirements of the rule and achieve its policy goals.

Estimated Burden

Estimated Number of Respondents: 51.

Estimated Burden per Respondent: 140 hours.

Estimated Total Annual Burden: 7,140 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

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

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Eden Gray,

Assistant Director, Office of the Comptroller of the Currency.

[FR Doc. 2026–22415 Filed 11–2–26; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activities; Comment Request on Foreclosure Sale Purchaser

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the IRS is inviting comments on the information collection request outlined in this notice.

DATES: Written comments should be received on or before January 4, 2027 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Control No. 1545–2199'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, 202–317–6009.

SUPPLEMENTARY INFORMATION: The IRS, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the IRS assess its impact and minimize the burden of its information collection requirements. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record and be viewable on relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Title: Foreclosure Sale Purchaser.

OMB Control Number: 1545–2199.

Form Number: 15597.

Abstract: This form is used to gather contact information of the purchaser from a 3rd party foreclosure sale when the IRS is considering the redemption of the property.

Current Actions: There is no change to the previously approved information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit groups, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Governments.

Estimated Number of Responses: 150.

Estimated Time per Response: 4.08 hours.

Estimated Total Annual Burden Hours: 613.

Dated: October 30, 2026.

LaNita Van Dyke,

Tax Analyst.

[FR Doc. 2026–22401 Filed 11–2–26; 8:45 am]

BILLING CODE 4831–GV–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activities; Comment Request on Individual Retirement Account Compliance Resolution System

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the IRS is inviting comments on the information collection request outlined in this notice.

DATES: Written comments should be received on or before January 4, 2027 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Control No. 1545–NEW'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jason Schoonmaker, (801) 620–6008.

SUPPLEMENTARY INFORMATION: The IRS, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the IRS assess the impact and minimize the burden of its information collection requirements. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record, and viewable on relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Title: Individual Retirement Account Compliance Resolution System.

OMB Control Number: 1545–NEW.

Form Number: 15443, 15745, 15745–A, 15745–B, 15745–C.

Regulation Project Number: Revenue Procedure 2026–33.

Abstract: This revenue procedure establishes the IRA Compliance Resolution System (ICRS), a new correction program for individual retirement accounts and annuities (IRAs). The program permits IRA custodians and IRA owners to correct certain eligible inadvertent failures that occur due to custodian errors or inadvertent errors by a service provider. ICRS also transitions requests for waivers of the 60-day rollover requirement from private letter ruling requests under Rev. Proc. 2026–4 to requests for waivers under ICRS.

Form 15443 is used by an IRA custodian or owner to apply for the Individual Retirement Account/Annuity (IRA) Voluntary Correction Program (IVCP) or to request a pre-submission conference to discuss a potential IVCP submission.

Form 15745 is used by IVCP applicants to describe the eligible inadvertent failures the applicant wishes to correct under IVCP and the proposed methods of correction. If applicable, applicants that are IRA custodians also describe proposed procedures to locate lost IRA owners or beneficiaries and proposed revisions to administrative procedures.

Form 15745–A is used by IVCP applicants to identify required minimum distribution failures, to describe proposed methods of correction, and request relief related to those failures. If applicable, applicants that are IRA custodians also describe changes to administrative procedures.

Form 15745–B is used by IVCP applicants to identify nonspouse beneficiary distribution or rollover failures and IRA establishment failures and to describe proposed methods of correction and request relief related to those failures. If applicable, applicants that are IRA custodians also describe changes to administrative procedures.

Form 15745–C is used by IVCP applicants to identify 60-day rollover failures and to describe proposed methods of correction and request relief related to those failures.

Current Actions: This is a new information collection.

Type of Review: New collection of information.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 30,750.

Estimated Time per Response: 1 hour, 16 minutes.

Estimated Total Annual Burden Hours: 38,909.

Dated: October 29, 2026.

Jason M. Schoonmaker,

Tax Analyst.

[FR Doc. 2026–22384 Filed 11–2–26; 8:45 am]

BILLING CODE 4831–GV–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0012]

Agency Information Collection Activity: Application for Cash Surrender, Application for Policy Loan, Application for Cash Surrender

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration(VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be received on or before January 4, 2027.

ADDRESSES: Comments must be submitted through *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT:

Program-Specific information: Kendra McCleave, 202–461–9760, *Kendra.Mccleave@va.gov*.

VA PRA information: Dorothy Glasgow, 202–461–1084, *VAPRA@va.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Cash Surrender (VA Form 29–1546C). Application for Policy Loan (VA Form 29–1546L). Application for Cash Surrender (VA Form 29–1546e).

OMB Control Number: 2900–0012. *https://www.reginfo.gov/public/do/PRASearch* (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

Type of Review: Revision of a currently approved collection.

Abstract: The Application for Cash Surrender and Application for Policy Loan solicits information needed from Veterans to apply for cash surrender value or policy loan on his/her insurance. The VA Form 29–1546e has been added to this collection. This is an electronic version of the 29–1546C for cash surrender. This form was created so Veterans can apply for a cash surrender of their policy online. This will not affect the number of respondents but will make it easier and reduce the time it takes for Veterans to receive the cash value of their policy. The information on this form is required by law, 38 U.S.C. 1906 and 1944, 38 CFR 6.115, 6.116, 6.117, 8.27, 6.100, 6.101 and 8.28.

Affected Public: Individuals and households.

Estimated Annual Burden: 4,939 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Upon Request.

Estimated Number of Respondents: 29,636.

Authority: 44 U.S.C. 3501 *et seq.*

Shunda Willis,

Alternate, VA PRA Clearance Officer, Office of Information and Technology, Office of Data Governance and Analytics, Department of Veterans Affairs.

[FR Doc. 2026–22391 Filed 11–2–26; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 91 Tuesday,

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Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 191 and 193

Pipeline Safety: Amendments to Liquefied Natural Gas Facilities; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 191 and 193

[Docket No. PHMSA–2019–0091]

RIN 2137–AF45

Pipeline Safety: Amendments to Liquefied Natural Gas Facilities

ACTION: Notice of proposed rulemaking (NPRM).

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

SUMMARY: PHMSA proposes updating its regulations for liquefied natural gas (LNG) facilities to incorporate by reference the most recent industry safety standards and to make other changes to account for more than two decades of improvements and technological advancements. This rulemaking also responds to congressional mandates directing PHMSA to integrate risk-based regulatory approaches for certain LNG facilities.

DATES: Comments on this NPRM must be submitted by January 4, 2027. A public meeting of PHMSA's statutory advisory committees will be held on a date to be announced in the **Federal Register**.

ADDRESSES: Submit comments by any of the following methods, identifying docket number PHMSA–2019–0091 at the top of the first page:

- On *https://www.regulations.gov,* follow instructions to ''submit a comment.''
- By mail or hand delivery to Docket Management System, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Hand delivery is available to this address between 9:00 a.m. and 5:00 p.m., Monday through Friday (except Federal holidays). Include two copies if submitting by mail and include a self-addressed and stamped postcard to receive confirmation of receipt.

Comments may be viewed at *https://www.regulations.gov/docket/PHMSA-2019-0091.* Comments are posted without changes or edits, including any personal information provided. DOT's privacy statement can be reviewed at *https://www.dot.gov/privacy.* A plain language summary of the proposed rule is also available in section I.B. that is placed on the rulemaking docket, pursuant to 5 U.S.C. 553(b)(4).

Confidential Business Information (CBI): You may designate a comment as CBI if your comment contains commercial or financial information that is customarily treated as private and that you actually treat as private by sending to Brianna Wilson, at the contact information listed below, the following: (1) the original document with each page containing CBI marked as ''confidential;'' (2) a redacted copy with the CBI deleted; and (3) an explanation of why the information you are submitting is CBI. *See* 49 CFR 190.343. Any comment not specifically designated as CBI will be placed in the public docket.

FOR FURTHER INFORMATION CONTACT: Brianna Wilson, Standards and Rulemaking Division, by phone at (771) 215–0969 or by email at *brianna.wilson@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. Executive Summary
II. Background
III. Section-by-Section Discussion of the Proposed Changes in Part 191
IV. Section-by-Section Discussion of the Proposed Changes in Part 193
V. Regulatory Analyses and Notices

I. Executive Summary

A. Purpose and Scope of the Regulatory Action

PHMSA has been regulating the safety of LNG facilities for more than five decades. When PHMSA issued the first Federal safety standards in 1970, the U.S. LNG industry comprised mostly relatively small ''peak-shaving'' facilities used to liquefy and store natural gas for delivery to local markets during times of peak demand. The handful of large-scale LNG facilities at that time were primarily built to import natural gas for domestic consumption. The U.S. LNG industry did not have a significant role as an exporter of natural gas.

Market conditions have changed dramatically since the 1970s. U.S. natural gas production has increased significantly, particularly in the past two decades as technological advancements in the oil and gas industry have led to the development of energy resources from the Nation's shale plays. Domestic natural gas demand has continued to grow, and an increasing number of U.S.-based facilities are exporting LNG to foreign markets. These changes have created a need for the construction of new LNG facilities and for the expansion of existing LNG facilities.

Modern operational and maintenance practices within the LNG industry are considerably more sophisticated and robust, reflecting many thousands of hours of experience since the 1970s. New technologies have emerged, such as ''membrane'' tanks (which employ a thin cryogenic steel inner liner with a load-bearing, concrete outer tank—an approach offering improved storage capacity, reduced material costs, and faster construction schedules than earlier LNG storage tank designs) and pipe-in-pipe (PIP) transfer systems (which provide enhanced containment of releases from cryogenic piping).

PHMSA's oversight of the LNG industry has not kept pace with these dramatic changes. PHMSA's LNG regulations are largely based on the 2001 edition of an industry standard, NFPA 59A, *Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG),* and have not been updated since 2006. NFPA 59A–2001 is now seven editions out of date, and multiple stakeholders have called on PHMSA to update its regulations to account for the latest practices in the siting, design, construction, operation, and maintenance of LNG facilities. For example, in the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (PIPES Act of 2016), Congress directed PHMSA to develop regulations for permanent, small-scale LNG facilities, an issue specifically addressed in the more recent editions of NFPA 59A.[1] In the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (PIPES Act of 2020), Congress directed PHMSA to develop alternative, risk-based operations and maintenance requirements for large-scale LNG facilities, an approach consistent with modern regulatory frameworks that apply in other industries.[2] The Government Accountability Office (GAO) has also advised PHMSA to update its regulations to align better with current editions of consensus industry standards.[3]

To address these concerns, PHMSA proposes a comprehensive revision to its safety standards for LNG facilities. The proposed amendments would enhance public safety by incorporating the latest consensus industry standards for the siting, design, construction, operation, and maintenance of LNG facilities. These changes will promote the use of new technologies, reduce unnecessary barriers to investment, and provide regulatory certainty for

[1] PIPES Act of 2016, Public Law 114–183 (June 22, 2016).

[2] PIPES Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[3] GAO, *Natural Gas Exports: Updated Guidance and Regulations Could Improve Facility Permitting Processes* (Aug. 6, 2020) (GAO Report).

interested stakeholders. PHMSA's proposals will also address outstanding Congressional mandates and GAO recommendations and advance the President's commitments to unleashing American energy, sustaining U.S. defense operations, and ensuring the energy security of the U.S. and its allies.

B. Summary of the Major Regulatory Provisions

Below is a high-level summary of the most substantial changes proposed in this document. This NPRM discusses each change in more detail in the ''Section-by-Section Discussion of the Proposed Changes.''

1. Calibrating Reporting Requirements to Public Safety Risks

PHMSA proposes to amend the reporting requirements for safety-related conditions and incidents. First, PHMSA proposes to clarify that operators of LNG facilities must report safety-related conditions and incidents during initial startup. This clarification would help ensure that operators are reporting incidents and safety-related conditions that occur at the earliest phase in the operational lifetime of an LNG facility, which is critical in determining its long-term integrity. PHMSA also proposes to broaden the definition of incidents and safety-related conditions to encompass hazardous fluids beyond LNG alone; this proposed change will improve risk mitigation and incident response by focusing on the various materials involved in gas processing activities at LNG facilities. Second, PHMSA proposes to revise the incident and annual report forms to eliminate content with little or no safety value, and to update the operator identification number (OPID) and annual report forms to accommodate the new requirements for permanent, small-scale LNG facilities in subpart D.

2. Incorporation by Reference Updated Editions of Leading Industry Standards

PHMSA proposes to incorporate by reference the 2026 edition of NFPA 59A.[4] PHMSA currently incorporates the 2001 edition of NFPA 59A for most purposes. Incorporating the 2026 edition is consistent with PHMSA's longstanding practice of integrating NFPA 59A as a key component of its regulations for LNG facilities. As part of that process, PHMSA proposes to redesignate or to remove certain duplicative or unnecessary regulatory requirements and to modify or to supplement certain provisions in NFPA 59A–2026 (*e.g.,* design wind resistance of certain LNG facilities; design spill assumptions in hazard modeling) to accommodate significant public safety risks or to facilitate implementation.

Incorporating NFPA 59A–2026 would enhance the requirements for the siting, design, installation, construction, operations, and maintenance of LNG facilities and align PHMSA's regulations with the latest safety-enhancing practices and technologies. It would also reduce certain compliance costs by allowing LNG operators to use those practices and technologies without obtaining special permits or waivers and address outstanding Congressional mandates and GAO recommendations.

3. Improved Alignment Between Facility Siting Requirements and Safety Risks

PHMSA proposes to incorporate by reference the traditional, prescriptive siting requirements in chapter 5 of NFPA 59A–2026. Incorporating chapter 5 would expand the universe of hazards operators must evaluate to comply with the part 193, subpart B siting requirements, ensuring that those analyses are consistent with current knowledge of the public safety risks posed by releases of hazardous fluids from LNG facilities.

PHMSA also proposes to incorporate the new risk-based siting requirements in chapter 19 (*Performance-Based LNG Plant Siting Using Quantitative Risk Analysis (QRA)*) of NFPA 59A–2026. PHMSA expects that the QRA-based approach will improve facility safety by allowing a more sophisticated understanding of public safety risks, enhancing the allocation of resources, and incentivizing deployment of innovative operational practices and technology. PHMSA expects that improved flexibility regarding LNG facility siting and internal layout under the QRA-based approach could enable investment in additional capacity at existing locations.

4. Introduction of Targeted Requirements for Permanent, Small-Scale LNG Facilities

PHMSA proposes to establish requirements for permanent, small-scale LNG facilities by incorporating chapter 17 of NFPA 59A–2026 by reference into a new subpart D. Permanent, small-scale LNG facilities entail lower risks to public safety and the environment than larger LNG facilities, primarily due to their distinguishable liquefaction processes, lower liquefaction capacity, and smaller LNG storage volumes, and should be regulated accordingly. Incorporating the chapter 17 requirements would also address the rulemaking mandate in section 27(b) of the PIPES Act of 2016 for permanent, small-scale LNG facilities.

5. Integration of an Alternative, Risk-based Operations and Maintenance Framework

Consistent with section 110 of the PIPES Act of 2020, PHMSA proposes to adopt an alternative, risk-based operations and maintenance (O&M) program for FERC-jurisdictional LNG facilities in a new subpart F. The risk-based O&M alternative would be a structured program with procedures developed and implemented to identify, to evaluate, and to mitigate or to eliminate hazards and the resulting risks. Operators employing this approach would have flexibility to tailor a risk-based approach to the specific risks from their facilities. Operators electing to use the risk-based O&M alternative would be required to submit an implementation plan specifying a timeline for integration of program elements.

C. Costs and Benefits

PHMSA estimates the annualized cost savings from the proposed rule to be approximately $98 million (discounted at three percent). PHMSA notes that some of the new compliance costs and many of the cost savings of the proposed rule could not be quantified based on the available data.

PHMSA anticipates significant unquantified safety benefits would result from adopting the safety-enhancing elements of NFPA 59A–2026, as supplemented and qualified by other proposed part 193 amendments. Because LNG facilities are complex systems whose failure generally involves multiple ''but for'' causes, PHMSA was not able to quantify a reduction in incident risk pursuant to the proposed rule. Other unquantified benefits include increased flexibility for LNG facility siting under the QRA-based approach in NFPA 59A–2026 chapter 19, increased regulatory flexibility for permanent, small-scale LNG facilities subject to the requirements in NFPA 59A–2026 chapter 17, and the use of new technologies, such as membrane tanks, single-walled ASME (American Society of Mechanical Engineers) containers, and PIP systems, which PHMSA was not able to quantify due to uncertainty around potential uptake of the proposed flexibilities.

The preliminary regulatory impact analysis (PRIA) provided in the docket for this rulemaking includes additional information about the costs, benefits,

[4] National Fire Protection Association (NFPA), *59A–2026 Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)* (Dec. 9, 2025) (NFPA 59A–2026).

and other impacts of the proposed rule. The PRIA's quantification of costs and benefits reflects assumptions and estimates based on the information and data available. PHMSA requests information and data from the public regarding the PRIA's evaluation of expected costs and benefits of its proposed requirements. PHMSA has preliminarily determined that, notwithstanding the uncertainties and data limitations discussed in the PRIA, the proposals in the NPRM would be justified by their corresponding compliance costs savings, enhanced regulatory flexibility, or improved public safety benefits.

II. Background

A. LNG as an Energy Source, Industry Growth, and Regulatory Safety

1. LNG as an Energy Source

Natural gas is vital to the energy and economic security of the United States and its allies abroad, serving as an economic driver and essential fuel source for residential, commercial, and industrial purposes. Total annual U.S. natural gas consumption has increased from 5.0 Tcf in 1949 to 33.5 Tcf in 2025.[5] Global natural gas consumption similarly is expected to grow from 152.9 Tcf to 194.3 Tcf by 2050 due to increasing demand in emerging markets and developing economies.[6] Domestic U.S. and international demand for natural gas has made it an important driver of the U.S. economy; a smaller U.S. natural gas sector in 2018 contributed over 3.4 million jobs and $408 billion to U.S. Gross Domestic Product (GDP).[7]

Increased reliance on natural gas from a variety of applications is contributing to this growing demand. First, natural gas is a critical source of electric power generation capacity and grid stability. In addition to providing dispatchable electricity, natural gas electric power generation also supplies grid attributes (*e.g.,* inertia) increasingly vital to grid stability as more intermittent renewable energy generation capacity joins the grid and baseload coal and nuclear plants retire. Second, natural gas is essential for many industrial feedstock and process heat applications, as well as commercial and residential heating and cooking purposes. Third, natural gas is an increasingly vital fuel source in the transportation sector, powering maritime vessels (*i.e.,* marine bunkering), fueling truck fleets, and providing an alternative gas supply during pipeline testing activities.

But many regions—both within the United States and the wider world—do not have reliable access to natural gas. Some regions are far-removed from natural gas supply reservoirs; others have limited pipeline infrastructure enabling transportation of natural gas in gaseous form or are vulnerable to supply interruptions on natural gas pipelines. Reliable natural gas supply in such circumstances may turn on access to LNG—natural gas that has been cooled to low temperatures (minus 260 °F or minus 162 °C) and converted to a liquid state. This conversion process, known as liquefaction, reduces the volume of natural gas to approximately 1/600th of its volume in a gaseous state. The reduction in volume makes LNG efficient for transportation and storage purposes in areas with limited natural gas resources or limited pipeline supply of natural gas.

Prior to liquefaction, the natural gas must be treated (pre-treatment) to remove impurities and extract heavy hydrocarbons (extraction). The pre-treatment, hydrocarbon extraction, and liquefaction processes may involve a number of hazardous fluids—including materials that are flammable (*e.g.,* methane, ethane, ethylene, propane, butane, pentane, other heavy hydrocarbons including aromatic hydrocarbons, hydrogen sulfide, and anhydrous ammonia); toxic (*e.g.,* aromatic hydrocarbons, hydrogen sulfide, and anhydrous ammonia); and corrosive (*e.g.,* anhydrous ammonia, amine solution, and aromatic hydrocarbons). Such hazardous materials can be present in either gaseous or liquid form at different stages of these processes. Larger LNG facilities, such as import or export terminals, will typically employ more complex liquefaction processes (and different, and larger quantities of, hazardous fluids) than smaller LNG facilities, such as peak shavers and mobile and temporary facilities. After liquefaction, LNG is stored and transported in specialized tanks that are insulated and refrigerated to maintain low temperatures. When needed for use, LNG undergoes a regasification process in which it is warmed and converted back into its gaseous state. The vaporized natural gas can then be injected into a pipeline system for distribution or used as fuel for natural gas-operated equipment.

The flexibility arising from the transportation and storage of LNG has made it a vital element in natural gas supply infrastructures around the world. Within the United States, LNG peak shaving facilities provide local customers with access to natural gas during times of peak demand. There is also increasing interest in developing small-scale, mobile, or temporary LNG facilities to support novel applications (*e.g.,* ensuring continuity of power to data centers and for industrial applications). And U.S. LNG export facilities are a critical energy resource for a variety of countries—including strategic U.S. allies in Asia and Europe—which either have limited native energy resources, desires to diversify their energy portfolios, or plans to transition away from coal for electric power and process heat generation. Recent supply disruptions of LNG exports from international LNG suppliers like Qatar have also underscored the unique value of U.S. LNG exports to the energy security of America's trading partners.

2. Growth and Increasing Domestic and International Significance of the U.S. LNG Industry

The U.S. LNG industry has undergone significant changes in the two decades since PHMSA last amended its part 193 regulations. The design and configuration of the 117 regulated LNG facilities in service at that time reflected the more limited role of natural gas within the domestic U.S. economy and consisted mostly of the following:

- Peak-shaving plants designed to store surplus natural gas for use during high demand periods, such as summer and winter. Peak-shaving plants ensure reliability by liquefying and storing natural gas when demand is low and re-gasifying and distributing natural gas when demand is high. Natural gas shortages in the 1970s drove a wave of construction of peak-shaving plants. Operators began slowly retiring those plants in subsequent decades. The number of peak-shaving plants decreased from 75 in 2006 to 67 in 2018.
- Satellite plants serving peak-shaving purposes but lacking the processing equipment required to convert natural gas to LNG. Specially equipped trucks (or tanks transported on rail flatcars) deliver LNG to satellite plants, where the LNG is stored and later re-gasified and injected into natural gas distribution systems to meet

[5] U.S. Energy Info. Admin. (EIA), *Natural Gas: U.S Gas Total Consumption,* available at: *https://www.eia.gov/dnav/ng/hist/n9140us2a.htm* (last visited Apr. 23, 2026).

[6] EIA, *International Energy Outlook 2023 Table: World Natural Gas Consumption by Region,* available at: *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=6-IEO2023&region=0-0&cases=Reference&start=2020&end=2050&f=A&linechart=Reference-d230822.21-6-IEO2023&map=&ctype=linechart&sourcekey=0.*

[7] Am. Gas Ass'n (AGA), *Benefits to the Economy through the Direct Use of Natural Gas* (July 9, 2020), available at: *https://www.aga.org/research-policy/resource-library/benefits-to-the-economy-through-the-direct-use-of-natural-gas/.*

demand. In 2006, there were 23 satellite plants.

• Mobile and temporary LNG plants designed to be easily movable rather than permanent structures. Mobile LNG plants, such as skid-mounted or trailer-mounted units, can be relocated as needed. Temporary LNG plants are used for short-term applications, providing supply during planned construction and maintenance activities or to meet unanticipated demand. Mobile and temporary LNG plants are compact and often located near end users to minimize transportation costs and enhance accessibility. In 2006, there were nine mobile and temporary facilities.

• Large-scale terminals for importing LNG for domestic use, exporting LNG to foreign markets, or both. In 2006, the United States was a net importer of natural gas; there were four import terminals and one export terminal representing an aggregate 4.877 Bcf/d vaporization capacity. These terminals played a relatively small role in the U.S. and global energy economy in 2006.

The shale gas revolution has fundamentally reshaped domestic and international energy markets over the past two decades. Newly abundant natural gas supplies have resulted in a rapid expansion of natural gas power generation capacity and industrial and commercial applications within the United States—a trend that is expected to accelerate due to onshoring of industrial capacity and skyrocketing demand for continuous electric generation capacity supporting super intelligence and data centers.[8] The number of part 193-regulated U.S. LNG facilities has increased in response to these recent market developments. As of 2025, there are 69 peak shaving plants, many of which are larger, and more complex, than the smaller plants typical in 2006. The number of other PHMSA-jurisdictional LNG plants has increased as well: in 2004, there were 22 satellite plants, 8 mobile or temporary facilities, and 4 import terminals (representing 4.877 Bcf/d import capacity); in 2025 there were 32 satellite plants, 43 mobile or temporary facilities, and 9 import terminals (representing 14.934 Bcf/d import capacity). Abundant natural gas supplies have also resulted in proliferation of so-called ''small-scale'' applications of LNG catering to niche markets, including off-grid power generation, localized peak-shaving, industrial equipment usage (such as oil and gas drilling equipment), and transportation fuels for vehicles, rail, or maritime use.[9]

But the most significant change since 2006 has been the emergence of enormous U.S. natural gas export capacity. The United States now boasts eight operational, PHMSA-jurisdictional export terminals providing ca. 17.0 Bcf/d of capacity. Sixteen additional projects (providing an additional ca. 31.28 Bcf/d capacity) either are in construction or are expected to begin construction in the near future.[10] And the United States—a net importer of natural gas in 2006—exported approximately 15.1 Bcf/d of LNG in 2024, making it the world's largest LNG exporter, responsible for roughly 21 percent of worldwide LNG supply.

LNG exports have become critical to U.S. economic prosperity and national security. A 2026 study predicts that through 2040 U.S. LNG exports will contribute an aggregate of around $1.4 trillion to U.S. GDP, more than $2.9 trillion in total revenues for U.S. businesses, $206 billion in Federal and State tax revenues, and more than $630 billion in labor income. The industry will support an average of over a half-million U.S. jobs annually.[11] U.S. LNG exports also reduce trade deficits with economic competitors and have become a focal point for U.S. policymakers in recent tariff negotiations with U.S. trading partners.[12] U.S. LNG exports are a vital form of support for key U.S. allies as well. Europe and Asia were the top destinations for U.S. LNG exports in 2025.[13] Japan alone imported 222.9 Bcf of U.S. LNG in 2025, roughly 4.0 percent of the U.S. LNG exports for 2025. The Netherlands imported 645.8 Bcf of U.S. LNG in 2025, the most of any country and roughly 11.7 percent of U.S. LNG exports that year.[14] Exports to Europe increased following Russia's invasion of Ukraine; in 2022, Europe received 69 percent of all LNG exports from the United States, up from 34 percent in 2021. From January through November 2025, Europe received 68 percent of U.S.-origin volumes.[15]

3. The Regulatory Framework and Industry Efforts To Ensure LNG Facility Safety

Multiple Federal agencies play a role in ensuring the safety of onshore LNG facilities.[16] These agencies exercise their respective authorities through a variety of administrative tools—including implementing regulations, guidance, orders, and enforcement actions—that can govern different phases of the lifecycle (including authorization, construction, and operations) of LNG facilities. The States also have a role in administering the Federal safety framework for intrastate LNG facilities. Industry, too, has pursued continuous safety improvement, developing voluntary (but widely adopted) consensus and industry codes, standards, recommended practices, guidelines reflecting safety-enhancing best practices, and technological advances that have outpaced the development of Federal safety regulatory regimes. These mutually reinforcing approaches have yielded a strong historical safety record for all PHMSA-jurisdictional LNG facilities.

a. The Regulatory Framework Ensuring Safety

Guardrails for Federal agencies' exercise of their respective regulatory authorities over the safety of LNG facilities are set forth in a series of interagency agreements and memoranda of understanding. Noteworthy among those interagency efforts are: a 2004 Interagency Agreement between PHMSA, FERC, and the USCG governing waterfront LNG facilities (typically FERC-jurisdictional import and export facilities); [17] a 2018

[8] *See* Sturgeon (Xcel) & Hummel (Chart Industries), *Transcript of Oct. 2025 Public Meeting,* Docket ID PHMSA–2019–0091–7624, at 67:12–70:20, 72:20–77:16 (Oct. 25, 2025).

[9] *See* Hummel (Chart Industries), *Transcript of Oct. 2025 Public Meeting,* Docket ID PHMSA–2019–0091–7624, at 72:20–77:16 (Oct. 25, 2025); Christa Marshall, *Data Centers Increasingly Turn to Off-Grid Gas,* EE News (Feb. 5, 2026).

[10] PHMSA, *Liquefied Natural Gas (LNG) Annual Data—2010 to Present,* available at: *https://www.phmsa.dot.gov/data-and-statistics/pipeline/gas-distribution-gas-gathering-gas-transmission-hazardous-liquids* (last visited Apr. 14, 2026); FERC, *U.S. LNG Export Terminals—Existing, Approved Not Yet Built, and Proposed,* available at: *https://www.ferc.gov/media/us-lng-export-terminals-existing-approved-not-yet-built-and-proposed* (last visited Apr. 14, 2026).

[11] S&P Global, *Price and Economic Impacts of an Accelerating Export Industry: U.S. LNG Impact Study—Phase 4* (July 2026).

[12] Reuters, *U.S. LNG Producers Climb as EU Agrees to $750 Billion in Energy Purchases* (July 28, 2025), available at: *https://www.reuters.com/business/energy/us-lng-producers-climb-eu-agrees-750-billion-energy-purchases-2025-07-28/.*

[13] EIA, *Today in Energy: U.S. Natural Gas Exports to Grow Nearly 30% by 2027 as LNG Facilities Ramp Up* (Apr. 16, 2026), available at: *https://www.eia.gov/todayinenergy/detail.php?id=67484.*

[14] EIA, *U.S. Natural Gas Exports and Re-Exports by Country,* available at: *https://www.eia.gov/dnav/ng/NG_MOVE_EXPC_S1_A.htm* (last visited Apr. 22, 2026).

[15] EIA, *Today in Energy: Ten Years After First Sabine Pass Cargo, U.S. LNG Exports are Still on the Rise* (Feb. 24, 2026), available at: *https://www.eia.gov/todayinenergy/detail.php?id=67224.*

[16] PHMSA has not attempted to identify here the entire universe of Federal agencies whose regulatory schemes could touch on the diverse activities of PHMSA-jurisdictional LNG facilities but instead focused on those playing the most prominent role in their safety regulation.

[17] *Interagency Agreement Among the Federal Energy Regulatory Commission, United States Coast Guard, and Research and Special Programs*

Continued

Memorandum of Understanding between FERC and PHMSA regarding PHMSA's role in FERC's environmental analyses supporting LNG facility certificate applications; [18] and a 2020 Annex to a 2004 Memorandum of Understanding between DOT and DHS outlining the respective roles of PHMSA and the DHS agencies (including TSA, USCG, and CISA) regarding the physical and cybersecurity of PHMSA-jurisdictional LNG facilities.[19]

PHMSA

PHMSA's authority to regulate the safety of LNG facilities is derived from the Pipeline Safety Laws (49 U.S.C. 60101 *et seq.*). The Natural Gas Pipeline Safety Act of 1968 authorized DOT to prescribe and to enforce minimum Federal safety standards for gas pipeline facilities and persons engaged in the transportation of gas, including the conversion and storage of gas by LNG facilities.[20] Subsequent amendments to the Pipeline Safety Laws directed DOT to establish and to enforce safety standards specific to LNG facilities.[21] The PHMSA Administrator exercises this authority on behalf of the Secretary pursuant to a delegation at 49 CFR 1.97.[22]

PHMSA has prescribed comprehensive minimum safety standards for LNG facilities at part 193. These safety standards consist of siting, design, installation, construction, testing, maintenance, and operations (including fire protection and physical security) requirements. PHMSA also requires owners and operators of LNG facilities to submit annual, incident, and safety-related condition reports. PHMSA oversees compliance with the part 193 regulations by conducting inspections; investigating incidents; and, if necessary, initiating enforcement actions.[23] PHMSA also plays an important role in FERC's exercise of its authority under sections 3 or 7 of the Natural Gas Act (NGA, 15 U.S.C. 717 *et seq.*). Pursuant to the 2004 Interagency Agreement between PHMSA, FERC, and the USCG, PHMSA serves as a cooperating agency supporting FERC's compliance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) in connection with certificates for new and modified LNG facilities. The 2018 Memorandum of Understanding elaborated on that historical role, as it provides that PHMSA's participation in FERC's NEPA reviews will also entail issuance of a letter of determination on an applicant's compliance with PHMSA's part 193, subpart B siting requirements.

PHMSA's enabling statutes and implementing regulations also prescribe important limits on its authority to regulate LNG facilities. For example, because PHMSA's statutory authority only extends to the transportation of gas by pipeline, part 193 has historically only applied to LNG facilities that receive gas from or deliver gas to a part 192-regulated pipeline.[24] Part 193 has also not applied to LNG facilities used either by ultimate consumers of LNG or natural gas (§ 193.2001(b)(1)) or in natural gas treatment or hydrocarbon extraction that do not store LNG (§ 193.2001(b)(2)). The Pipeline Safety Laws at 49 U.S.C. 60101(a)(14)(B) explicitly prohibit PHMSA from regulating structures or equipment at LNG facilities located in navigable waters as defined by the Federal Power Act (16 U.S.C. 796), a prohibition codified by regulation at 49 CFR 193.2001(b)(4). In addition, part 193 regulations codify at § 193.2001(b)(3) the allocation of regulatory authority between the USCG and the Research and Special Projects Administration (RSPA, PHMSA's predecessor agency) memorialized within a 1978 Memorandum of Understanding, whereby RSPA disclaimed regulatory authority for matters other than siting with respect to the ''marine cargo transfer system and associated facilities'' at waterfront LNG facilities.[25]

Other documents inform PHMSA's exercise of its statutory authority over LNG facilities. The 2004 Memorandum of Understanding between DOT and DHS reflects post-9/11 legislation re-allocating primary responsibility for transportation security from DOT to the then newly established DHS (though the Memorandum contemplates that DOT operating administrations will support DHS security efforts and retain their pre-existing statutory authority to ensure the safety of different modes of transportation in ways that could overlap with DHS's security mission). Subsequently negotiated annexes (most recently the 2020 Annex negotiated between TSA and PHMSA) elaborate on each agency's respective responsibilities and commit to mutual collaboration on information sharing, critical infrastructure security and resilience, strategic planning, and development of standards and guidance. The 2004 Interagency Agreement between PHMSA, FERC, and USCG similarly memorializes commitments among those agencies for cooperation in their respective operations-phase inspections of LNG facilities.

PHMSA exercises jurisdiction over 23 FERC-authorized (including existing, certificated but not-yet-built) onshore LNG import and export terminals; there are two additional LNG import and export terminal applications currently under FERC review that would be regulated by PHMSA as well. PHMSA also regulates more than 69 LNG peak-shaving facilities, 43 mobile/temporary facilities, and 32 satellite facilities.[26]

Federal Energy Regulatory Commission (FERC)

Under the NGA, FERC issues orders authorizing the siting, construction, expansion, and operation of LNG import and export terminals (NGA, section 3

Administration for the Safety and Security Review of Waterfront Import/Export Liquefied Natural Gas Facilities (Feb. 10, 2004), available at: *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/InteragencyAgreementLNG%2CFeb2004.pdf* (2004 Interagency Agreement).

[18] *Memorandum of Understanding Between the Department of Transportation and the Federal Energy Regulatory Commission Regarding Liquefied Natural Gas Transportation Facilities* (Aug. 31, 2018), available at: *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/news/64706/ferc-phmsa-mou.pdf* (2018 Memorandum of Understanding).

[19] *Annex to the Memorandum of Understanding Between the Department of Homeland Security and the Department of Transportation Concerning Transportation Security Administration and Pipeline and Hazardous Materials Safety Administration Cooperation on Pipeline Transportation Security and Safety* (Feb. 26, 2020), available at: *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/regulatory-compliance/phmsa-guidance/73466/phmsa-tsa-mou-annexexecuted.pdf* (2020 Annex).

[20] Public Law 90–481.

[21] 49 U.S.C. 60103; *see* Public Law 114–183; Public Law 116–260.

[22] For additional information on the history of PHMSA's authority to regulate the safety of LNG facilities, see RSPA, *Associate Administrator Decision Denying Petition for Rulemaking from the Commonwealth of Massachusetts and the State of Rhode Island,* Docket ID PHMSA–RSPA–2004–19208–0007 (Oct. 25, 2006).

[23] 49 U.S.C. 60112 *and* 49 CFR 190.233 (corrective action order authority based on PHMSA decision that a pipeline facility is or would be ''hazardous''); 49 U.S.C. 60117(m) *and* 49 CFR 190.239 (notice of proposed safety order authority based on PHMSA determination that a pipeline facility has a condition posing a ''pipeline integrity risk''); 49 U.S.C. 60117(p) *and* 49 CFR 190.235–190.237 (emergency order authority based on PHMSA determination that an unsafe condition or practice ''constitutes or is causing an imminent hazard''); 49 U.S.C. 60122 *and* 49 CFR 190.221–190.225 (civil penalty authority based on PHMSA determination that a person violated a pipeline safety law, regulation, or order); 49 U.S.C. 60118(b) *and* 49 CFR 190.217 (compliance order authority based on PHMSA determination that a person is violating a pipeline safety law, regulation, or order).

[24] *See, e.g.,* PHMSA, *LNG Plant Requirements: Frequently Asked Questions,* at G1, available at: *https://www.phmsa.dot.gov/pipeline/liquified-natural-gas/lng-plant-requirements-frequently-asked-questions* (last visited Sep. 11, 2025) (LNG FAQs).

[25] *See* MTB, *Liquefied Natural Gas Facilities; New Federal Safety Standards,* 45 FR 9184, 9188 (Feb. 11, 1980).

[26] PHMSA, *LNG Annual Data—2010 to Present.*

(codified at 15 U.S.C. 717b and 717b–1)) and certificates of public convenience and necessity for some LNG peak shaving facilities (NGA, section 7 (codified at 15 U.S.C. 717f)).[27] As part of the application process, FERC requires operators to submit detailed site-specific engineering, design, and operations information; evidence that the facility will safely receive or deliver LNG; and procedures and design features to mitigate potential hazards to the public resulting from accidental releases or natural catastrophes.[28] Most of the information submitted to FERC during the application process would be considered process safety information required to be addressed under the PIPES Act of 2020.

Furthermore, FERC requires applicants to explain how the proposed project will comply with applicable Federal regulations, including part 193, in implementing NEPA and the NGA.[29] FERC engages PHMSA as a cooperating agency as part of the application review process in analyzing compliance with the part 193 siting requirements. In addition, FERC evaluates the engineering information submitted by an applicant against the applicable regulations and additional codes, standards, and other recommended and generally accepted good engineering practices (RAGAGEPs) listed by the applicant or that are routinely applied to LNG facilities. FERC similarly engages USCG as another cooperating agency under NEPA in reviewing waterway suitability assessments (WSAs).

FERC orders for LNG facilities typically contain conditions memorializing a broad range of applicant commitments and FERC-imposed requirements directed toward safety and environmental protection. Such conditions include, but are not limited to, submitting for review and approval: final designs of various engineering and process safety information, completed process hazard analyses (PHAs), management of change (MOC) procedures and logs, pre-start-up safety reviews (PSSRs), O&M procedures, including preventative and predictive maintenance plans (*e.g.,* mechanical integrity procedures), hot work procedures, contractor oversight procedures, and emergency response plans developed in consultation with Federal, State, and local emergency management agencies and emergency responders. Moreover, FERC requires an implementation plan and schedule for meeting the conditions in its orders, authorizes initiation of various activities, and conducts annual or biennial inspections to verify compliance during construction, commissioning, and operations. FERC also requires operators to notify its staff of significant non-scheduled events, including safety and security-related incidents, and to submit semi-annual reports of modifications in design of facilities and operating conditions and abnormal operating and maintenance experiences, including release of hazardous fluids.

FERC exercises jurisdiction over 23 (including existing, certificated but not-yet-built) LNG import and export terminals onshore or in State waters, as well as 13 LNG peak-shaving plants involved in interstate gas transportation.[30] Additional LNG import and export terminal applications are currently under FERC formal application or pre-filing review.

Department of Homeland Security (DHS)—United States Coast Guard (USCG)

USCG's regulatory authority over onshore, waterfront LNG facilities arises from statutes governing the safety and security of ports and navigable waterways.[31] USCG exercises primary regulatory authority for safety within marine cargo transfer areas at waterfront LNG plants, which USCG refers to as the marine transfer area for LNG, and has adopted regulations at 33 CFR part 127 governing the design, construction, maintenance and operations of those facilities—but has historically deferred to PHMSA's evaluation under 49 CFR part 193, subpart B of the hazards arising from their siting. USCG also exercises primary responsibility for physical security of the marine cargo transfer area as well as the entirety of waterfront LNG facilities and has issued regulations at 33 CFR part 105 governing the submission and approval of FSPs. Title 33 CFR part 101 (Subpart F) also governs cybersecurity requirements of LNG facilities under 33 CFR part 105.

USCG regulations address the suitability of waterways for LNG marine traffic in connection with waterfront LNG facilities (33 CFR 127.007 and 127.009), and vessel engineering and construction safety (46 CFR part 154) and security (33 CFR part 104) for LNG ship traffic in connection with waterfront LNG facilities; USCG reviews operator-submitted WSAs documenting compliance with those regulations for each such LNG facility. USCG also performs reasonable examinations and inspections at waterfront LNG facilities to verify compliance with its regulations and any obligations imposed in connection with its review of FSPs and WSAs.[32] In addition, USCG regulations require that operators notify the appropriate Federal agency of suspicious activities, security breaches, and transportation security incidents.[33]

USCG exercises jurisdiction over 23 (including existing, certificated but not-yet-built) waterfront LNG import and export terminals, as well as 4 bunkering facilities.[34]

Department of Homeland Security (DHS)—Transportation Security Agency (TSA) and Cybersecurity and Infrastructure Security Agency (CISA)

The Homeland Security Act of 2002 consolidated homeland security responsibilities within DHS. Congress transferred two DOT operating administrations to DHS in that legislation: the USCG and TSA.[35] Subsequently, Congress passed the Cybersecurity and Infrastructure Security Agency Act of 2018, establishing CISA within DHS and

[27] *See 15 U.S.C. 717a(11), b(e), f.* FERC also has the authority to approve the design, construction, and siting of natural gas import and export facilities. *See* 15 U.S.C. 717b(a); *see also* 42 U.S.C. 7151(b) (2012); U.S. Dep't of Energy, *Delegation Order No. 00–004.00A* (May 16, 2006).

[28] *See* 18 CFR part 153; 18 CFR 380.12(m)–(o).

[29] *See* 18 CFR 380.12(o)(14).

[30] FERC, *U.S. LNG Export Terminals—Existing, Approved Not Yet Built, and Proposed;* FERC, *U.S. LNG Import Terminals—Existing, Approved Not Yet Built, and Proposed,* available at: *https://www.ferc.gov/media/us-lng-import-terminals-existing-approved-not-yet-built-and-proposed* (last visited Apr. 14, 2026); FERC, *Jurisdictional Peakshavers* (Nov. 2, 2020), available at: *https://www.ferc.gov/sites/default/files/industries/gas/indus-act/lng/lng-peakshavers.pdf.*

[31] *E.g.,* Magnuson Act of 1950 (46 U.S.C. 70051); Ports and Waterways Safety Act of 1972, as amended (46 U.S.C. Ch. 700); Maritime Transportation Security Act of 2002 (46 U.S.C. Ch. 701). PHMSA notes that the proposed amendments to 49 CFR parts 191 and 193 do not modify, limit, supersede, or otherwise affect existing Coast Guard authorities or requirements applicable to waterfront LNG facilities, marine transfer areas, mobile or temporary LNG facilities at or near waterfront locations where Coast Guard requirements may apply, including facility security, waterway suitability, and Captain of the Port authorities. In addition, PHMSA clarifies that compliance with 49 CFR part 193, including any incorporated NFPA 59A–2026 provisions, does not relieve an operator of any applicable Coast Guard requirement.

[32] 33 CFR 127.011.

[33] 33 CFR 101.305.

[34] Int'l Mar. Org, *Fuel Supply: Supply of Alternative Fuels,* available at: *https://futurefuels.imo.org/latest-information/fuel-supply/* (last visited Apr. 21, 2026).

[35] Public Law 107–296, 116 Stat. 2135, 2249–50 (codified as amended at 6 U.S.C. 468(b)) (transferring the USCG's authorities, functions, personnel, and assets to DHS). Congress established TSA in the Aviation and Transportation Security Act of 2001 (Pub. L. 107–71, 115 Stat. 597, 597–98 (codified as amended at 49 U.S.C. 114)) and assigned it primary responsibility for transportation security in all modes of transportation. 49 U.S.C. 114(d).

assigning CISA primary responsibility for coordinating cybersecurity protection for the Nation's energy infrastructure.[36]

In 2010, TSA issued the initial edition of its Pipeline Security Guidelines to assist operators of gas pipelines and LNG facilities in the development and evaluation of comprehensive security programs at their facilities. TSA's Pipeline Security Guidelines, which have been updated several times (most recently in April 2021), set forth non-binding guidance pertaining to corporate security policies, security vulnerability assessments, physical security measures, and cybersecurity efforts.[37] TSA conducts voluntary visits with pipeline operators as part of its Corporate Security Review Program. TSA personnel work with operator personnel during these visits to analyze FSPs and policies and compare practices against the Pipeline Security Guidelines.

Following the 2021 Colonial Pipeline ransomware attack, TSA issued Security Directives imposing mandatory cybersecurity requirements on a limited number of critical pipeline facilities, including certain peak shaving facilities. TSA issued Security Directive Pipeline-2021–01 (Security Directive) requiring owners and operators of critical pipeline facilities to take crucial measures to enhance pipeline cybersecurity.[38] This Security Directive requires operators of those facilities (1) to report confirmed and potential cybersecurity incidents to CISA; (2) to designate a Cybersecurity Coordinator to be available 24 hours a day, seven days a week; (3) to review current practices by performing a cybersecurity vulnerability assessment; and (4) to identify any gaps and related remediation measures to address cyber-related risks and report the results to TSA and CISA.[39]

On July 20, 2021, TSA issued Security Directive Pipeline-2021–02 requiring operators of TSA-designated critical facilities to implement additional protections against cyber intrusions and degradation of critical infrastructure, including development and execution of Cybersecurity Implementation, Response, and Assessment Plans as well as annual Cybersecurity Assessment Plan reporting to CISA.[40] Subsequent renewals of each of those Security Directives have clarified and expanded pertinent programmatic and reporting requirements.[41]

States

The Federal Pipeline Safety Laws preserve a role for States in regulating the safety of LNG facilities. State authorities may obtain a certification from PHMSA to regulate the safety of intrastate LNG facilities not subject to the jurisdiction of FERC under the NGA—typically peak shaving, mobile/temporary, and satellite LNG facilities.[42] Certified State authorities may prescribe and enforce additional or more stringent safety standards for intrastate LNG facilities, so long as those safety standards are compatible with the Federal requirements in the Pipeline Safety Regulations (49 CFR parts 190–199). As of February 2026, 41 State authorities are certified to regulate approximately 149 intrastate LNG facilities.[43]

b. Industry Efforts Promoting LNG Facility Safety

The LNG industry plays an active role in ensuring the safety of PHMSA-jurisdictional LNG facilities, particularly through the development of voluntary consensus industry standards and recommended practices. The leading industry standard for LNG facilities is NFPA 59A. First published in 1967, PHMSA has incorporated NFPA 59A by reference into the Federal safety standards for LNG facilities since 1972.[44] The most recent edition of NFPA 59A, published in 2026, includes mandatory standards for the siting, design, construction, operation, and maintenance of LNG facilities. This edition incorporates a comprehensive list of other consensus industry standards addressing particular topics as well as several informational annexes providing guidance to facilitate compliance with its mandatory provisions.[45]

A technical committee (Technical Committee) is responsible for drafting each edition of NFPA 59A to ensure its provisions reflect the latest safety-enhancing advances in operator practices and technologies. The Technical Committee consists of 35 principal experts and 21 alternates from State and Federal government and the LNG industry. Collectively, the Technical Committee has extensive expertise on all aspects of LNG safety. PHMSA and FERC are among the government participants on the Technical Committee, with representatives of each of those agencies serving as voting members.

The process employed by the Technical Committee in updating NFPA 59A has been accredited by the American National Standards Institute (ANSI). Development of each edition of NFPA 59A lasts between three to five years and involves a four-step process: (1) public input; (2) public comment; (3) NFPA Technical Committee meeting; and (4) standards council action. Public input from industry stakeholders and members of the general public is accepted for consideration in the Technical Committee's development of the initial draft of an updated edition. Once the initial draft is developed, the Technical Committee posts that initial draft (accompanied by reports summarizing and responding to input from the public and Technical Committee members) on a publicly available website and solicits comments. After analyzing any comments received, the Technical Committee prepares the second draft (and potentially subsequent drafts)

[36] Public Law 115–278, 132 Stat. 4169–72.

[37] TSA, *Pipeline Security Guidelines* (Apr. 2021), available at: *https://www.tsa.gov/sites/default/files/pipeline_security_guidelines.pdf.*

[38] On May 8, 2021, the Colonial Pipeline Company announced that it had halted its pipeline operations due to a ransomware attack. This attack temporarily disrupted critical supplies of gasoline and other refined petroleum products throughout the East Coast of the United States. *See* TSA, *Ratification of Security Directive, Security Directive Pipeline–2021–01,* 86 FR 38209 (July 20, 2021); DHS, *DHS Announces New Cybersecurity Requirements for Critical Pipeline Owners and Operators* (May 27, 2021), available at: *https://www.dhs.gov/news/2021/05/27/dhs-announces-new-cybersecurity-requirements-critical-pipeline-owners-and-operators.*

[39] TSA, *Ratification of Security Directive, Security Directive Pipeline–2021–01,* 86 FR 38209 (July 20, 2021).

[40] TSA, *Ratification of Security Directive, Security Directive Pipeline–2021–02,* 86 FR 52953 (Sep. 24, 2021).

[41] TSA, *Security Directive Pipeline–2021–01G* (Jan. 6, 2026); TSA, *Security Directive Pipeline-2021–02F* (May 1, 2025). TSA Pipeline Security Directives are maintained at *https://www.tsa.gov/sd-and-ea.*

[42] PHMSA also notes that most LNG facilities not subject to FERC authority under the NGA are approved by State regulators (*e.g.,* public utility commissions). Those State regulators may either list safety requirements among the terms and conditions of such approvals or accept regulatory commitments by project sponsors to adopt certain safety requirements.

[43] The Pipeline Safety Laws at 49 U.S.C. 60106 also permit PHMSA to make an agreement with a State authority authorizing it to participate in the oversight of interstate LNG facilities and other gas pipeline facilities. No State with interstate LNG facilities has entered into such an agreement. *See* PHMSA, *LNG Plant Safety Programs: Participating States in the Federal/State Cooperative Partnership* (Apr. 2026), available at: *https://www.npms.phmsa.dot.gov/Documents/LNG_CoopAgreementsMap.pdf.*

[44] 37 FR 21638 (amending part 192 to create a new § 192.12 that will establish Federal safety standards for liquefied natural gas facilities at § 192.12 and incorporating, by reference, the 1971 edition of NFPA 59A).

[45] Standards listed in NFPA 59A–2026's mandatory provisions and informational annexes are also generally themselves mature documents (building on successive editions issued over many years) resulting from extensive discussions among industry technical experts and government regulators on technical issues.

pursuant to a similar process and posts its responses to the comments received on the previous draft. After the Technical Committee approves the revised draft, the NFPA Standards Council approves issuance of the updated standard.

c. The LNG Industry's Strong Safety Record Since 2006

The U.S. LNG industry has a remarkably strong safety record. Since 2010, there has been more than a 50 percent increase in the number of all PHMSA-jurisdictional LNG facilities—121 facilities in 2010 compared to the 181 facilities in 2024. That increase has not led to more incidents. Incident data across all PHMSA-jurisdictional LNG facilities shows that there have been three or fewer significant incidents reported in each of the past 15 years.[46] In 11 out of those 15 years, one or fewer significant incidents were reported. Zero significant incidents were reported in six of those years, and only two reportable injuries occurred during that entire 15-year period—one at a peak shaving facility in 2014 and one at a mobile and temporary facility in 2023. And there was only a single fatality (at a mobile/temporary facility—not the more complex LNG export or peak shaving facilities).

The same strong safety record holds if the 15-year data is examined for each type of LNG facility. For LNG export facilities, there were no significant incidents reported in 10 out of the 15 years even as the number of those facilities has more than doubled between 2010 and 2024. Peak shaving facilities reported only three significant incidents, and mobile and temporary LNG facilities had only one significant incident—even as the number of each of those facilities increased since 2010. And non-marine baseload and satellite facilities had no significant incidents during the 15-year period even as the number of those facilities increased more than 100 percent.

4. Broad Demand for Updated PHMSA Regulations on LNG Facility Safety

Despite the significant changes that have occurred throughout the LNG industry, PHMSA has not updated its part 193 regulations since 2006. Instead, PHMSA has leaned more heavily on guidance in the form of its LNG FAQs implementing its part 193 regulations to accommodate innovations in facility design, function, construction and operational practices, and technology. But PHMSA's LNG FAQs—which have been updated nine times since their introduction in 2014—are not legally binding and do not provide interested stakeholders with the regulatory certainty needed to make informed decisions. PHMSA's delay in updating its part 193 regulations has in turn encouraged FERC to exercise its statutory authority to impose more legally binding, safety-related conditions in authorizing new LNG projects. Although this case-by-case approach is done with PHMSA and USCG as cooperating agencies and includes a fairly consistent set of conditions, PHMSA's or USCG's recommendations are subject to FERC's consideration, which can inject further uncertainty into the regulatory framework. As discussed in more detail below, a broad consensus has been reached about the need to update part 193 regulations to address these and other concerns.

Executive Orders

Noting that modern LNG facilities ''bear little resemblance to the small peak shaving facilities'' typical when PHMSA first issued its part 193 regulations in February 1980, President Trump in his first term issued Executive Order (E.O.) 13868, *Promoting Energy Infrastructure and Economic Growth,* directing PHMSA to issue a final rule updating its part 193 regulations no later than May 2020.[47] E.O. 13868 directed PHMSA to ensure that those updated regulations employed ''risk-based standards to the maximum extent possible.''

In his second term, President Trump has issued a series of executive orders encouraging investment in the Nation's energy infrastructure and the use of risk-informed regulations ensuring the safety of those facilities. On his first day in office for his second term, the President issued E.O. 14156, *Declaring a National Energy Emergency,* identifying the integrity and expansion of U.S. energy infrastructure to support affordable domestic energy prices and robust energy exports as a U.S. national and economic security priority.[48] That same day, President Trump issued E.O. 14154, *Unleashing American Energy,* requiring agencies to reduce undue burdens on the identification, development, or use of domestic energy resources to protect U.S. energy and national security, singling out the contribution of LNG exports to U.S. national security and economic growth.[49] Later his first month in office, President Trump issued E.O. 14192, *Unleashing Prosperity Through Deregulation,* requiring agencies to identify opportunities to alleviate unnecessary regulatory compliance burdens imposed on industry and the general public.[50] Lastly, in response to disruptions in LNG supply routes due to regional conflicts, President Trump issued a Determination under the Defense Production Act of 1950 (Pub. L. 81–774) to promote expansion of (*inter alia*) U.S. LNG export capacity to sustain U.S. defense operations and ensure the energy security of U.S. allies.[51]

Congressional Mandates

Congress has repeatedly called on PHMSA to update its part 193 regulations. On June 22, 2016, Congress enacted the PIPES Act of 2016.[52] Section 27 directed PHMSA to review and to update the minimum safety standards for LNG facilities and to ensure that those regulations appropriately address the public safety risks posed by permanent, small-scale LNG pipeline facilities.

On December 27, 2020, Congress enacted the PIPES Act of 2020.[53] Section 110 of that legislation directed PHMSA to review existing part 193 regulations governing operations and maintenance (including those pertaining to fire protection, security, and training) and to establish a framework by which operators of ''large-scale'' LNG facilities can design and employ alternative, risk-based regulatory approaches. PHMSA's regulatory framework governing operators' risk-based alternatives must achieve a level of safety that is equivalent to, or greater than, the level of safety required by the minimum part 193 standards existing as of December 2020. Section 110 also requires PHMSA to review and to approve LNG facility implementation plans created under that alternative regulatory framework specifying a timeline for integration of elements mandated by statute. Congress

[46] PHMSA, *Liquefied Natural Gas (LNG) Incident Data—January 2011 to Present,* available at: *https://www.phmsa.dot.gov/data-and-statistics/pipeline/distribution-transmission-gathering-lng-and-liquid-accident-and-incident-data* (LNG Incident Report Data). By ''significant'' PHMSA means an incident involving fatality, injury, or total property damage of $50K or more in 1984 dollars.

[47] E.O. 13868, *Promoting Energy Infrastructure and Economic Growth,* 84 FR 15495 (Apr. 19, 2019).

[48] E.O. 14156, *Declaring a National Energy Emergency,* 90 FR 8433 (Jan. 29, 2025).

[49] E.O. 14152, *Unleashing American Energy,* 90 FR 8353 (Jan. 29, 2025).

[50] E.O. 14192, *Unleashing Prosperity Through Deregulation,* 90 FR 9065 (Feb. 6, 2025).

[51] *Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as amended, on Natural Gas Transmission, Processing, Storage and Liquefied Natural Gas Capacity* (Apr. 20, 2026).

[52] Public Law 114–183.

[53] Public Law No. 116–260.

directed that PHMSA codify the regulatory amendments required by section 110 by no later than December 2023.

GAO Recommendations

On August 6, 2020, GAO published a report titled *Natural Gas Exports: Updated Guidance and Regulations Could Improve Facility Permitting Processes* (GAO–20–619).[54] In that report, GAO made nine recommendations, including one to PHMSA that ''the Administrator of PHMSA should conduct a standards-specific review of regulations that incorporate standards and, if necessary, update the regulations or document its decision for not updating them. (Recommendation 5).'' [55] This rulemaking, if codified, would update the incorporated-by-reference standards and resolve Recommendation 5.

Regulated Community and Members of the Public—Historical Petitions for Rulemaking and Public Meetings

Industry and members of the public have repeatedly called on PHMSA to update its part 193 regulations. Since 2006, PHMSA has received several petitions for rulemaking on diverse topics including: pressure relief device (PRD) inspection periodicities; [56] application of updated editions of NFPA 59A to peak-shaving, satellite and small-scale LNG facilities; [57] targeted application of updated editions of NFPA 59A to LNG export terminals; [58] incorporation by reference of consensus industry standards governing concrete LNG storage containers; [59] and implementation of the PIPES Act of 2020 section 110 mandate.[60] PHMSA has also received petitions for rulemaking from members of the public, including a number of petitions submitted by a single commenter pertaining to vapor cloud dispersion modeling methodologies within PHMSA's siting analyses.[61] The discussions in section IV below respond to those petitions.

In addition, PHMSA has held multiple public meetings in the last two decades focused on improved safety at LNG facilities, including: a February 2005 workshop on LNG safety regulations; a May 2016 public workshop on LNG regulations; a February 2020 meeting; and a November 2022 forum on LNG research and development to improve part 193 regulations.[62] PHMSA has also held several meetings (including meetings in December 2007 and January 2025) of the Gas Pipeline Advisory Committee (GPAC) to consider proposed revisions to regulations pertinent to part 193-regulated facilities. In each of the meetings above, stakeholders from industry and environmental advocacy groups alike have emphasized the need for review and update of PHMSA's part 193 regulations.

2025 Advance Notices of Proposed Rulemaking and Public Meeting

In response to the Presidential directives, Congressional mandates, and broad stakeholder interest in updated part 193 regulations, PHMSA in May 2025 issued an Advance Notice of Proposed Rulemaking (ANPRM) soliciting stakeholder feedback on a variety of LNG-related topics informing its development of this NPRM.[63] PHMSA received over 7,618 comments. In parallel, PHMSA issued another ANPRM responding to E.O. 14154 soliciting stakeholder feedback on opportunities to ''unleash American energy'' by reducing undue burdens imposed by its Pipeline Safety Regulations—including its part 193 regulations.[64] PHMSA received another 528 comments in response to that ANPRM, with 79 of those comments identifying potential amendments of part 193 regulations. In October 2025, PHMSA also held a public meeting to discuss LNG issues consisting of moderated panel discussions supplementing the administrative record developed from those ANPRMs and earlier public meetings.[65] A diverse spectrum of stakeholders—including LNG industry operators and trade associations, State regulatory officials, and members of the public—expressed a uniform desire in each of these proceedings for PHMSA to update its regulations, even as they expressed diverse opinions as to the form those updates should take. PHMSA addressed those comments and discussions where pertinent within the discussions in section IV below.

III. Section-by-Section Discussion of the Proposed Changes in Part 191

PHMSA proposes to delete § 193.2011. Section 193.2011 simply directs operators of LNG facilities to report incidents, safety-related conditions, and annual pipeline summary data in accordance with the requirements in 49 CFR part 191. Part 191 applies on its own terms to LNG facilities, rendering the reference in § 193.2011 unnecessary. PHMSA discusses proposed revisions to part 191 reporting requirements in this section.[66]

A. Section 191.3—Definitions

Incident

PHMSA proposes to revise the definition of an ''incident'' to include the release of any hazardous fluid (as defined under proposed § 193.5) from an LNG facility. Section 191.3 is currently limited to releases of LNG, LPG, refrigerants, or natural gas. PHMSA has preliminarily determined that releases of hazardous fluids involved in the processing of gas within an LNG facility—including LNG, LPG, natural gas (which is composed predominantly of methane), ethane, ethylene, propane, butane, pentane, other heavy hydrocarbons (including

[54] GAO Report.

[55] *Id.*

[56] AGA & Interstate Nat. Gas Ass'n of Am. (INGAA), *Petition to Modify Language in 49 CFR 193.2619,* Docket ID PHMSA–2018–0070–0001 (June 19, 2018).

[57] AGA, *Petition to Amend part 193 NFPA 59A 2020,* Docket ID PHMSA–2019–0091–0005 (Jan. 21, 2020).

[58] Ctr. for LNG (CLNG), *Petition for Rulemaking,* Docket ID PHMSA–2019–0091–0004 (Oct. 5, 2020). This petition was subsequently withdrawn in 2021. *See* CLNG, *Request to Withdraw Petition for Rulemaking,* Docket ID PHMSA–2019–0091–0007 (May 1, 2021).

[59] Am. Concrete Inst. (ACI), *Petition for Rulemaking to Amend 49 CFR part 193,* Docket ID PHMSA–2019–0091–0008 (May 3, 2021); ACI, *Letter Update to ACI Petition_ACI,* Docket ID PHMSA–2019–0091–0011 (Nov. 9, 2023); ConocoPhillips, *Support for PHMSA Rulemaking—ACI 376,* Docket ID PHMSA–2019–0091–0009 (Nov. 18, 2021).

[60] *See* Am. Petrol. Inst. (API), CLNG & INGAA, *Pipeline Safety Amendments to Large-Scale LNG Facilities,* Docket ID PHMSA–2019–0091–7623 (Nov. 18, 2025).

[61] Havens, *Workshop on LNG Regulation—Petition for Rulemaking,* Docket ID PHMSA–2022–0076–0001 (June 8, 2022).

[62] Materials for each of those meetings are available on PHMSA's *Public Meetings* web page, available at: *https://primis-meetings.phmsa.dot.gov/* (last visited Jan. 25, 2026).

[63] PHMSA, *Pipeline Safety: Amendments to Liquefied Natural Gas Facilities,* 90 FR 18949 (advanced proposal May 5, 2025) (May 2025 ANPRM).

[64] PHMSA, *Pipeline Safety: Mandatory Regulatory Reviews To Unleash American Energy and Improve Government Efficiency,* 90 FR 23660 (advanced proposal June 4, 2025).

[65] PHMSA, *Pipeline Safety: Liquefied Natural Gas Facilities Public Meeting 2025,* 90 FR 47901 (Oct. 2, 2025).

[66] PHMSA acknowledges multiple industry comments on the May 2025 ANPRM regarding the burden imposed on some stakeholders from occasionally overlapping USCG, FERC, and PHMSA reporting requirements. *See, e.g.,* API, CLNG, INGAA, AGA, Am. Pub. Gas Ass'n (APGA), Northeast Gas Ass'n (NGA) (Joint Trade Associations), *Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7611, at 12 (July 7, 2025). PHMSA notes that each agency imposes different timing, content, and format requirements, complicating review of such information for trend analysis purposes. In addition, such facilities are a minority of those subject to PHMSA part 191 requirements. PHMSA therefore expects that synchronization of reporting requirements across Federal agencies will require additional coordination among the affected agencies.

aromatic hydrocarbons, hydrogen sulfide, and anhydrous ammonia), as well as toxic (*e.g.,* aromatic hydrocarbons, hydrogen sulfide, and anhydrous ammonia), and corrosive (*e.g.,* anhydrous ammonia, amine solution, and aromatic hydrocarbons) materials—should be treated as reportable incidents. Such reporting will facilitate Federal and State emergency response actions as well as regulatory oversight in identifying facility/operator-specific or industry-wide safety concerns.

LNG Facility

PHMSA proposes to revise the definition of an ''LNG facility'' to reflect the new code sections for part 193 proposed in this NPRM. Specifically, PHMSA proposes to revise the definition of ''LNG facility'' in § 191.3 to cite proposed § 193.5 instead of the current § 193.2007.

LNG Plant

PHMSA proposes to add a definition for an ''LNG plant'' aligned with the definition of that term in NFPA 59A–2026 (''an LNG facility or collection of LNG facilities functioning as a unit'') for clarity.

B. Section 191.22—National Registry of Operators

On September 12, 2014, PHMSA issued an advisory bulletin to owners and operators of gas and hazardous liquid pipelines to clarify the notifications required for certain construction-related events.[67] PHMSA believes that the guidance in that advisory bulletin could also assist LNG operators in determining what constitutes new construction or construction-related activities and clarify when to make required notifications proposed in this rulemaking.

Accordingly, PHMSA encourages operators to provide the required notification(s) no later than 60 days prior to whichever of the following construction-related activities occur first: material purchasing and manufacturing; plant site or right-of-way acquisition; construction equipment move-in activities; onsite or offsite fabrications; or plant site or right-of-way clearing, grading, and ditching. Although the notification prior to the first occurring construction-related activity is strongly encouraged and will benefit both PHMSA and the operator, these activities may not necessarily represent the commencement of construction for purposes of triggering the minimum 60-day notice period under the regulations.[68] PHMSA does not in this NPRM propose any modification to corresponding § 191.22 regulatory text but solicits comment as to how it can clarify the 60-day notice period for new construction in § 191.22 or any other sections of part 191.

PHMSA also proposes updating OPID forms and instructions to require operators of permanent, small-scale LNG facilities availing themselves of the regulatory flexibilities in subpart D to memorialize that designation. Existing facilities opting for that designation would need to update their OPIDs consistent with a new § 191.22(c)(2)(vi).

C. Section 191.15—Incident Reporting

PHMSA is not proposing any changes to the regulatory text at § 191.15 governing incident reporting for LNG facilities. However, PHMSA is proposing changes to the incident report form for LNG facilities (PHMSA F7100.3) and its accompanying instructions to address the proposed revisions to §§ 191.3 and 193.5 related to the addition of ''hazardous fluids.'' PHMSA also proposes to delete blocks C.1f to C.1i on PHMSA F7100.3 consistent with comments on its May 2025 ANPRM. The comments noted that the ''cost of commodity'' information did not contribute to safety or inform the calculation of the monetary threshold for incident reporting.[69] PHMSA notes that proposed changes to calculation of the monetary threshold within the § 191.3 definition of ''incident'' under consideration in a parallel rulemaking would—if adopted—apply to LNG facility incident reporting as well.[70]

D. Section 191.17—Annual Reporting

PHMSA is proposing to revise the annual report form for LNG facilities (PHMSA F7100.3–1) and its accompanying instructions to address the proposed revisions to §§ 191.3 and 193.5 related to releases of ''hazardous fluids'' generally, as well as to memorialize operator election as a ''permanent, small-scale LNG facility'' pursuant to the requirements in proposed subpart D.[71]

E. Section 191.23—Reporting Safety-Related Conditions

PHMSA proposes to revise the safety-related condition reporting requirements for LNG facilities to enhance safety monitoring and oversight. These changes would expand the scope of reporting to include releases of all hazardous fluids at LNG facilities and clarify that safety-related conditions during initial start-up (but not during earlier commissioning activities) must be reported.

First, PHMSA proposes to revise the list of safety-related conditions in § 191.23(a) to include the release of hazardous fluids involved in the processing of LNG. As discussed earlier, PHMSA proposes in § 191.3 to expand the definition of an ''incident'' to include releases of all hazardous fluids at an LNG facility. That change would require operators to notify PHMSA of incidents that involved releases of hazardous fluids. Similarly, PHMSA proposes to revise the notification requirements at § 191.23 to specify that releases of hazardous fluids at an LNG facility are reportable safety-related conditions. Including all hazardous fluids would ensure that PHMSA has a complete picture of safety-related conditions and would help identify potential risks and hazards associated with the release of substances used in processing activities—not just LNG—at an LNG facility.

Second, PHMSA proposes in § 191.23 to add a new paragraph (c) to clarify that each operator of an LNG facility must report any safety-related condition that occurs during initial startup as equipment and components begin commercial operation. Currently, § 191.23 requires LNG operators to notify PHMSA of safety-related conditions that occur while an LNG facility is ''in service.'' PHMSA has interpreted ''in service'' for these purposes to mean any time a hazardous fluid is introduced into an LNG facility, including during both commissioning and subsequent initial startup. PHMSA understands that historical reading is appropriate as to the latter but not the former.

Safety-related conditions present risks that are relevant throughout the life of

[67] PHMSA, ADB–2014–03, *Pipeline Safety: Construction Notification,* 79 FR 54777 (Sep. 14, 2014).

[68] *Id.*

[69] Joint Trade Associations, *Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7611, at 11.

[70] *See* PHMSA, *Pipeline Safety: Property Damage Definition for Reporting Incidents on Gas Pipelines and Accidents on Hazardous Liquid and Carbon Dioxide Pipelines,* 91 FR 22096 (proposed Apr. 24, 2026).

[71] In parallel with issuance of this NPRM, PHMSA has notified the public of its intention to modify previously approved information collections to replace the annual National Pipeline Mapping System filing requirement for LNG facilities with a one-time submission via the LNG facility annual report form. *See* PHMSA, *Pipeline Safety: Information Collection Activities,* 91 FR 36946 (June 18, 2026). Should PHMSA adopt those modifications, any final rule in this rulemaking proceeding would make a conforming revision to § 191.29(a) to delete the reference in that provision to ''or liquefied natural gas facility.''

an LNG facility, beginning at the point of initial start-up.[72] In contrast, commissioning activities pertain to equipment and components that are not yet ''in service,'' but rather are being evaluated for subsequent placement ''in service.'' Though PHMSA acknowledges that some commissioning activities involve the introduction of hazardous fluids, commissioning activities are necessarily directed toward identifying and curing potential issues under controlled and closely monitored conditions as a predicate for subsequent initial start-up activities; requiring operators to report these issues as safety-related conditions is not appropriate in such circumstances. However, should an event occur during commissioning that qualifies as an ''incident,'' operators would still remain obliged to notify PHMSA pursuant to § 191.3.[73] PHMSA expects that this revision to § 191.23 will allow operators to focus on identifying, evaluating, and curing system integrity concerns exposed during commissioning activities, rather than on filing safety related condition reports to PHMSA with potentially limited safety value.

F. Section 191.25—Filing Safety-Related Condition Reports

PHMSA proposes to change § 191.25 to streamline the reporting process for safety-related conditions identified under § 191.23. These changes include adding references to the newly proposed § 191.23(c) for LNG facilities and an editorial change for underground natural gas facilities, ensuring clarity and completeness in reporting procedures.

IV. Section-by-Section Discussion of the Proposed Changes in Part 193

PHMSA proposes to update part 193 by referencing the latest edition of NFPA 59A and, where necessary, providing exceptions from or modifications to certain requirements. These changes would retain NFPA–59A–2026 as the core of the part 193 regulations for LNG facilities, subject to certain additional or unique requirements. PHMSA also proposes to redesignate and to renumber various provisions throughout part 193 for clarity.

A. Incorporation by Reference of NFPA 59A–2026

PHMSA has incorporated NFPA 59A by reference into its regulations for LNG facilities since the early 1970s.[74] Part 193 currently incorporates by reference the 2001 edition of NFPA 59A into various requirements. The 2006 edition is incorporated by reference for purposes of certain specific requirements pertaining to LNG storage tanks.[75]

PHMSA's historical approach to incorporating NFPA 59A–2001 has presented challenges to operators in developing their compliance strategies. First, PHMSA does not incorporate the entirety of NFPA 59A–2001 by reference; rather, part 193 limits that incorporation to NFPA 59A–2001's siting requirements (§ 193.2051), design requirements (§ 193.2101), construction requirements (§ 193.2301), equipment requirements (§ 193.2401), and certain fire protection requirements (§ 193.2801). Moreover, the broad language PHMSA uses in incorporating NFPA 59A–2001 within these requirements creates regulatory uncertainty. Stakeholders have expressed concern regarding the extent to which specific NFPA 59A–2001 provisions are incorporated by reference into certain regulatory requirements (*e.g.,* design or construction).[76] The conflict preemption clause that PHMSA employs in connection with its incorporation by reference of NFPA 59A–2001 only contributes to that uncertainty. Part 193 fails to provide a clear standard as to what qualifies as a ''conflict'' between the pertinent sections of NFPA 59A–2001 and applicable regulations.

Second, NFPA 59A–2001 does not reflect the latest advancements in LNG facility design, function, construction, operational practices, and technologies. NFPA has been updated seven times since the publication of the 2001 edition; the current edition is a far more comprehensive and detailed document than its predecessor.[77] PHMSA has attempted to bridge the gap between the 2001 and more recent editions of NFPA 59A by providing industry with additional guidance on certain topics, but stakeholders are correct that agency guidance cannot itself create legally binding obligations.[78] The 2026 edition of NFPA 59A incorporates more recent editions of other industry standards (*e.g.,* ASME Boiler and Pressure Vessel Code) that are used in manufacturing LNG equipment. Continuing to reference an outdated edition of NFPA 59A (which, in turn, incorporates older editions of other industry standards) imposes unnecessary regulatory burdens. Operators must either order manufacturers to follow older standards in designing and constructing LNG equipment or overcome expensive and time-consuming procedural hurdles (*e.g.,* special permit applications or a finding of ''safety equivalence'' pursuant to section 1.2 of NFPA 59A–2001) simply to follow the latest manufacturing techniques.[79]

To address these concerns, PHMSA proposes to incorporate the latest edition of NFPA 59A by reference and to expand reliance on the mandatory provisions in that standard in part 193.[80] NFPA 59A–2026 is a consensus standard generated by industry and Federal and State regulators; public safety advocates have also endorsed its

[72] PHMSA is also aware that FERC requires reporting of safety-related conditions occurring during initial startup activities. Given that PHMSA regulates LNG facilities not under FERC jurisdiction (such as intrastate and small-scale facilities), PHMSA cannot solely rely on communications with FERC to have awareness of safety-related conditions arising during initial start-up activities.

[73] PHMSA is also aware that other regulators (*e.g.,* FERC) may impose their own reporting requirements and closely monitor commissioning-related activities for LNG facilities within their jurisdiction. PHMSA is also aware that individual operators may (*e.g.,* by contract) conflate ''commissioning'' and ''initial start-up'' activities; however, both PHMSA and NFPA 59A–2023 understand these phases to be generally distinguishable and sequential. *See, e.g.,* NFPA 59A–2026 at 18.8.1 (characterizing testing and verification activities during commissioning as a condition precedent to start-up operations).

[74] *See* Office of Pipeline Safety, *Liquefied Natural Gas Systems,* 37 FR 21638 (Oct. 13, 1972). PHMSA subsequently incorporated updates to NFPA–59A again in 1976 (NFPA 59A–1972, *in* MTB, *Part 192—Transportation of Natural and Other Gas by Pipeline; Minimum Federal Safety Standards,* 41 FR 13586, 13590 (Mar. 13, 1976)), 1980 (NFPA 59A–1979, *in* MTB, *Liquefied Natural Gas Facilities; New Federal Safety Standards,* 45 FR 9184, 9185 (Feb. 11, 1980)), and 2000 (NFPA 59A–1996 *in* RSPA, *Pipeline Safety: Incorporation of Standard NFPA 59A in the Liquefied Natural Gas Regulations,* 65 FR 10950 (Mar. 1, 2000)).

[75] PHMSA, *Update of Regulatory References to Technical Standards,* 71 FR 33402 (June 9, 2006); PHMSA, *Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Edits,* 75 FR 48593 (Aug. 11, 2010).

[76] Pipeline Safety Tr. (PST), *Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7613, at 9–10 (July 7, 2025).

[77] NFPA 59A–2001 contained 36 pages of mandatory provisions across 11 chapters, supplemented by 6 pages of non-mandatory, informational annexes. In contrast, NFPA 59A–2026 contains 65 pages of mandatory content across 19 chapters, supplemented by 28 pages of non-mandatory, informational annexes.

[78] *See, e.g.,* Blue Eng'g & Consulting (BLUE), *Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7503 (July 1, 2025) (discussing LNG FAQs).

[79] *See, e.g.,* Williams Cos., *Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7612 (July 7, 2025).

[80] PHMSA understands ''mandatory provisions'' consists of those provisions with imperative language (*e.g.,* ''shall'') within chapters 4 through 19 of NFPA 59A–2026. PHMSA proposes to exclude the contents of chapter 1 (Administrative) from those mandatory provisions of NFPA 59A–2026 due to potential tension with statutory provisions pertaining to the scope of PHMSA's jurisdiction, retroactive application of certain safety requirements, and special permits granting waivers from part 193 requirements.

incorporation by reference in part 193.[81] PHMSA expects that greater reliance on NFPA 59A–2026 will improve LNG safety, as the mandatory provisions in that standard contain far more detailed and comprehensive requirements than its 2001 counterpart. The technically rigorous, transparent process employed in the development of each edition of NFPA 59A ensures that the latest edition aligns with current practices in the LNG industry.[82] NFPA 59A–2026 also includes informational annexes to assist stakeholders in understanding its mandatory requirements.

B. Subpart A—General

Subpart A sets forth general rules governing application, interpretation, and implementation of part 193 regulations. It also contains a general requirement for operators to have and maintain plans and procedures as required by part 193.

PHMSA proposes to retain the existing provisions in subpart A, subject to the redesignation and revision of certain provisions. PHMSA is not proposing to incorporate the ''Administrative'' provisions in NFPA 59A–2026 due to potential inconsistencies with the requirements in the Pipeline Safety Laws.[83]

B.1. Section 193.1—Scope of Part

PHMSA proposes to redesignate in a new § 193.1 much of the language currently located in § 193.2001 describing the scope of the part 193 requirements. To provide additional clarity and ensure consistency with the terminology used in the USCG regulations for waterfront LNG facilities, PHMSA proposes to modify the exception in 49 CFR 193.1(b)(3). The exception, as currently codified at § 193.2001(b)(3), limits the applicability of part 193 to marine cargo transfer systems at waterfront LNG facilities to matters related to siting.

The term ''marine cargo transfer system'' is not defined in part 193 or used in the parallel USCG regulations for waterfront LNG facilities. Instead, the USCG regulations use the term ''marine transfer area for LNG,'' which is defined as ''that part of a waterfront facility handling LNG between the vessel, or where the vessel moors, and the last manifold or valve immediately before the receiving tanks.'' That definition is consistent with the current limitation on part 193 applicability in § 193.2001(b)(3), which also refers to ''the marine vessel and the last manifold (or in the absence of a manifold, the last valve) located immediately before a storage tank'' in describing a marine cargo transfer system.

Rather than having parallel provisions that use slightly different terminology, PHMSA proposes to incorporate the phrase ''marine transfer area for LNG as defined in 33 CFR 127.005'' directly into the new version of the scope requirements in § 193.1(b)(3). PHMSA also proposes to eliminate the remaining language from the current provision in § 193.2001(b)(3), which is not necessary as the definition of ''marine transfer area for LNG'' in 33 CFR 127.005 incorporates the relevant breakpoints used in delineating the scope of part 193 at waterfront LNG facilities. PHMSA does not intend this change to be substantive in nature or to alter the longstanding approach used in prescribing the scope of part 193's applicability at waterfront LNG facilities.

B.2. Section 193.3—Applicability

PHMSA proposes to redesignate the applicability requirements currently prescribed in § 193.2005 under a new § 193.3. Consistent with historical practice, § 193.3 would continue to reference the effective date of any final rule in this proceeding in prescribing the applicability of any part 193 subparts governed by the statutory retroactivity prohibition at 49 U.S.C. 60103(c) and 60104(b)(2). PHMSA also proposes to clarify the scope of that prohibition by stating in § 193.3(a) that the requirements in the non-retroactive subparts do not apply to existing LNG facilities or to proposed LNG facilities that an appropriate authority approved before those requirements went into effect. In addition, PHMSA proposes to remove from § 193.3(b) the current requirement at § 193.2005(b)(2) that PHMSA approve exceptions from retroactive application of updated part 193 design, installation, and construction requirements for so-called ''in-kind'' replacements of facilities designed, installed, and constructed in accordance with original facility specifications. This proposed change will improve alignment with analogous provisions (particularly section 1.4.4) in NFPA 59A–2026. PHMSA also proposes a revision to § 193.3(b)(2) to clarify application of the ''in-kind'' replacement provision to LNG storage tanks replacement projects that increase capacity or relocate the tank(s).

B.3. Section 193.5—Definitions

PHMSA proposes to redesignate the existing § 193.2007 as a new § 193.5 and to incorporate by reference the definitions in chapter 3 of NFPA 59A–2026 in lieu of the existing definitions in § 193.2007, subject to certain exceptions and modifications as discussed below. PHMSA understands that the definitions listed in NFPA 59A–2026 chapter 3 as supplemented or substituted by the definitions in the new § 193.5 would govern the meaning of both NFPA 59A–2026 and part 193.

Administrator

PHMSA proposes to retain the existing definition of ''Administrator'' in § 193.5. NFPA 59A–2026 includes a definition of an ''Authority Having Jurisdiction (AHJ)'' and in various places references the need for AHJ approval. For purposes of PHMSA's application of the NFPA 59A–2026 provisions being incorporated into part 193 referencing an AHJ or ''approval,'' the AHJ will typically (unless PHMSA has resolved the issue generically via part 193 regulatory text) be the PHMSA Administrator (or his delegate) by way of an operator-specific § 190.341 special permit process.[84] However, some NFPA 59A–2026 references to an ''AHJ'' may implicate the prerogative of other regulatory authorities; in those cases, PHMSA proposes to include within part 193 provisions disclaiming administration of an AHJ authorization called for by NFPA 59A–2026 language.[85]

[81] Earthjustice & Env't Def. Fund (EDF), *Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7596, at 1 (July 7, 2025).

[82] The NFPA website (*https://www.nfpa.org/codes-and-standards/nfpa-59a-standard-development/59a*) contains extensive documentation elaborating on the technical basis for revisions within each of the post-2006 editions of NFPA 59A and memorializing the Technical Committee's consideration of those revisions.

[83] Among those provisions of NFPA 59A–2026 that PHMSA declines to incorporate by reference is the ''equivalency'' language at section 1.4. PHMSA has in the past employed similar language in section 1.2 of NFPA 59A–2001 to assist operators in overcoming the practical consequences of PHMSA's delay in updating its part 193 regulations. *See* LNG FAQs, D5–D6. However, PHMSA understands that NFPA 59A–2001 language was never explicitly incorporated by reference into its part 193 regulations. In addition, PHMSA regulations at § 190.341 allow operators to apply for special permits requesting waivers of part 193 requirements, and PHMSA has broad authority to exercise its enforcement discretion to minimize liability risks arising from future delays in updating its regulations.

[84] PHMSA does not generally understand references within NFPA 59A–2026 to ''AHJ approvals'' to implicate the procedural machinery at § 190.9—an exception from this general rule being approval of model evaluation protocols (MEPs) and model validation databases (MVDs) in connection with siting analyses.

[85] PHMSA acknowledges requests by multiple industry stakeholders for improved allocation of responsibilities among different Federal agencies with statutory authority over LNG facilities—with some calling for each agency to have primary responsibility for one or another dimension of LNG facilities activities. *See, e.g.,* Joint Trade Associations, *Comments on the ANPRM,* Docket ID

Continued

Component

PHMSA proposes to retain within § 193.5 the existing definition of ''component,'' albeit with revisions to improve readability. PHMSA also proposes to add a reference to ''pressure vessel'' within the list of examples of ''components'' for additional clarity.

Design Pressure

PHMSA proposes to retain at § 193.5 the existing definition of ''design pressure.'' Section 193.2007 currently defines ''design pressure'' to mean ''the pressure used in the design of components for the purpose of determining the minimum permissible thickness or physical characteristics of its various parts . . . .'' NFPA 59A–2026 adopts a similar definition for ''design pressure'' but, unlike NFPA 59A–2001, omits the statement ''when applicable, the static head must be included in the design pressure to determine the thickness of any specific part.'' Because NFPA 59A–2026 removed that statement, PHMSA proposes to retain the current definition in part 193.

Design Spill

PHMSA proposes to add at § 193.5 a new definition for the term ''design spill,'' which would mean ''a potential spill or release from LNG and hazardous fluid containers, piping, and equipment at liquefaction, storage, transfer, or other process areas in an LNG facility.'' NFPA 59A–2026 uses but does not define the term ''design spill.'' PHMSA proposes to address that omission by defining the term ''design spill'' in the new § 193.5.

Determine

PHMSA proposes to retain at § 193.5 the existing definition of ''determine.'' Section 193.2007 currently defines ''determine'' as meaning to ''make a decision based on an appropriate investigation using scientific methods and sound engineering judgment, including documentation that demonstrates the basis of the decision.'' NFPA 59A–2026 uses but does not define the term ''determine.'' PHMSA proposes to retain the existing definition in part 193 to address that gap and provide interested stakeholders with additional regulatory certainty.

Emergency

PHMSA proposes to retain at § 193.5 and to revise for clarity the existing definition of ''emergency.'' Section 193.2007 currently defines an ''emergency'' to mean ''a deviation from normal operation, a structural failure, or severe environmental conditions that probably would cause harm to people or property.'' NFPA 59A–2026 does not define the term ''emergency.'' PHMSA proposes to retain the current definition to address that gap and to provide interested stakeholders with additional regulatory certainty.

Exclusion Zone

PHMSA proposes to retain at § 193.5 and to revise the existing definition of ''exclusion zone'' with minor revisions. Section 193.2007 currently defines ''exclusion zone'' to mean ''an area surrounding an LNG facility in which an operator or government agency legally controls all activities in accordance with § 193.2057 and § 193.2059 for as long as the facility is in operation.'' NFPA 59A–2026 does not define or use the term ''exclusion zone.'' PHMSA proposes to retain the existing definition in part 193 with an updated reference to subpart B siting requirements to accommodate other changes proposed in the NPRM. PHMSA is also proposing a minor revision to the existing regulatory text (''area *within or* surrounding an LNG facility'') to account for the fact that exclusion zones may surround an LNG facility even as they may be within the boundary of an LNG plant consisting of multiple LNG facilities.

Gas

PHMSA proposes to retain at the new § 193.5 the existing definition of ''gas.'' Section 193.2007 currently defines ''gas'' as ''except when designated as inert, . . . natural gas, other flammable gas, or gas which is toxic or corrosive.'' NFPA 59A–2026 does not define the term ''gas.'' PHMSA proposes to retain the existing definition to provide interested stakeholders with additional regulatory certainty.

Hazardous Fluid

PHMSA proposes to retain at the new § 193.5 the existing definition of ''hazardous fluid,'' albeit with certain revisions. Section 193.2007 currently defines the term ''hazardous fluid'' to mean ''gas or hazardous liquid.'' The terms ''gas'' and ''hazardous liquid'' are further defined, respectively, as ''except when designated as inert, . . . natural gas, other flammable gas, or gas which is toxic or corrosive'' and ''LNG or a liquid that is flammable or toxic.'' NFPA 59A–2026 provides a slightly different definition for ''hazardous fluid'' in that it uses the term ''ignitible'' in lieu of ''flammable,'' ostensibly to improve the scientific precision of the defined term. NFPA 59A–2026 also refers to both ''gas'' and ''hazardous liquids'' as potentially including corrosive substances.

PHMSA proposes to retain the existing reference to ''flammable'' rather than to substitute the term ''ignitible'' in the definition. The term ''flammable'' has long been used in the existing definition at § 193.2007 and mirrors corresponding statutory language at 49 U.S.C. 60101(a)(2)–(a)(4). PHMSA notes that the substitution of ''ignitible'' may not entirely resolve ambiguity in the regulatory language.[86]

PHMSA expects that the revised definition of ''hazardous fluid'' at § 193.5 will enhance safety at LNG facilities. Both the existing part 193 regulations and comparable provisions of NFPA 59A–2001 are largely directed toward addressing the public safety risks associated with LNG. However, subsequent editions of NFPA 59A have increasingly used the broader term ''hazardous fluid,'' expanding the scope of public safety risks (and corresponding LNG facility equipment, components, and processing activities) addressed under the provisions in that standard. PHMSA further notes that the revised definition conforms with the proposed revisions to the reporting requirements for LNG facilities at § 191.3, which would expand the incident, annual, and safety-related condition reporting to include the non-exhaustive list of ''hazardous fluids'' described in section III.A above.

Hazardous Liquid

PHMSA proposes to retain at § 193.5 and to revise the existing definition of ''hazardous liquid.'' Section 193.2007 currently defines ''hazardous liquid'' as ''LNG or a liquid that is flammable or toxic.'' NFPA 59A–2026 does not define this term. PHMSA's enabling statute acknowledges at 49 U.S.C. 60101(a)(4)(B)–(C) that a hazardous liquid can be a substance that is ''corrosive,'' and some of the materials present in liquid form within processes at LNG facilities (*e.g.,* hydrogen sulfide, anhydrous ammonia) are in fact corrosive for human tissue. For that reason, PHMSA proposes to add the term ''corrosive'' to the existing

PHMSA–2019–0091–7611, at 2–3. The fact that multiple Federal agencies share overlapping regulatory oversight authority over LNG facilities reflects congressional intent; PHMSA is, therefore, constrained in its ability to impose by amendments to its part 193 regulations boundaries on other agencies' exercise of their statutory prerogatives. That said, PHMSA will work with other Federal agencies to update pertinent interagency agreements to address this concern.

[86] *See* BLUE, *Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7503, at 11 (criticizing the introduction of the ''ignitable'' language as ''add[ing] additional vagueness.'').

definition of hazardous liquid in part 193.

Impounding System

PHMSA proposes to retain at § 193.5 and to revise the existing definition of ''impounding system.'' Section 193.2007 currently defines ''impounding system'' as ''an impounding space, including dikes and floors for conducting the flow of spilled hazardous liquids to an impounding space.'' NFPA 59A–2026 does not define an ''impounding system'' but uses the term throughout the document. To provide additional regulatory certainty, PHMSA proposes to retain the definition for ''impounding system'' in part 193. However, PHMSA proposes to replace the term ''impounding space'' with ''impounding area'' for clarity by adopting the more modern term used by newer editions of NFPA 59A.

Liquefied Natural Gas or LNG

PHMSA proposes to retain at § 193.5 and to revise for editorial clarity the existing definition of LNG. Section 193.2007 currently defines ''LNG'' as ''natural gas or synthetic gas having methane (CH_4) as its major constituent which has been changed to a liquid.'' PHMSA proposes to clarify that definition by replacing the word ''which'' with ''that'' to ensure a more precise definition.

LNG Facility

PHMSA proposes to retain at § 193.5 and to revise the existing definition of ''LNG facility.'' Section 193.2007 currently defines ''LNG facility'' as a ''pipeline facility that is used for liquefying natural gas or synthetic gas or transferring, storing, vaporizing liquefied natural gas, including on-site power generation facilities.'' PHMSA proposes to add to this definition an explicit reference to ''on-site power generation facilities.'' That addition is consistent with PHMSA's longstanding understanding that ''on-site power facilities'' are ''LNG facilities'' subject to the requirements in part 193.[87] PHMSA further notes that this addition enhances public safety by ensuring that on-site power generation facilities (some of which may use fuels that are themselves flammable or explosive) are subject to the same safety standards as other LNG facilities.

Maximum Allowable Working Pressure (MAWP)

PHMSA proposes to retain in § 193.5 the current definition of ''maximum allowable working pressure (MAWP).'' Section 193.2007 currently defines MAWP as ''the maximum gauge pressure permissible at the top of the equipment, containers, or pressure vessels while operating at design temperature.'' NFPA 59A–2026 adopts a similar definition, except that it specifies the maximum pressure permissible at the top of ''completed equipment.'' PHMSA is not aware of the reasoning behind the reference in NFPA 59A–2026 to ''completed equipment'' in defining MAWP. To avoid introducing unnecessary confusion as to whether ''equipment'' is completed or not, PHMSA proposes to retain the existing part 193 definition of MAWP.

Normal Operation

PHMSA proposes to retain at § 193.5 and to revise for clarity the existing definition of ''normal operation.'' Section 193.2007 currently defines ''normal operation'' as ''functioning within allowable ranges of pressure, temperature, flow, and other operating criteria consistent with the requirements of this part.'' NFPA 59A–2026 does not define this term. Accordingly, PHMSA proposes to retain the current definition without change.

Operator

PHMSA proposes to retain at § 193.5 and to revise the existing definition of the term ''operator'' to align with the definition of ''liquefied natural gas pipeline facility'' in 49 U.S.C. 60101(a)(14). Section 193.2007 currently defines LNG facility as ''a pipeline facility that is used for liquefying natural gas or synthetic gas or transferring, storing, or vaporizing liquefied natural gas.'' Though an LNG facility is a type of ''pipeline facility'' as that term is defined in the Pipeline Safety Act, 49 U.S.C. 60101(a)(18) and 49 CFR 193.2007, NFPA 59A–2026 does not define this term. Moreover, section 193.2007 currently defines an ''operator'' as a ''person who owns or operates an LNG facility.'' To ensure consistency with the definitions in the Pipeline Safety Act and implementing regulations, PHMSA proposes to revise the definition of ''operator'' in part 193 to mean ''a person who owns or operates a pipeline facility.'' PHMSA notes that a person seeking authorization to construct and operate planned LNG facilities is an ''operator'' for purposes of this definition.

Person

PHMSA proposes to retain at § 193.5 and to revise for readability the existing definition of ''person'' in part 193. Section 60101(a)(17) of the Pipeline Safety Act defines a ''person'' as ''in addition to its meaning under section 1 of title 1 (except as to societies), includes a State, a municipality, and a trustee, receiver, assignee, or personal representative of a person.''[88] Similarly, section 193.2007 currently defines a ''person'' as ''any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.'' NFPA 59A–2026 does not define this term. The proposed definition improves readability by replacing the phrase ''and includes'' with ''including'' and standardizing capitalization for regulatory entities (*e.g.,* State), thereby ensuring the language is consistent with conventions elsewhere in part 193 regulations.

Pipeline Facility

PHMSA proposes to retain at § 193.5 but to revise for readability the existing definition of ''pipeline facility'' in part 193. Section 193.2007 currently defines ''pipeline facility'' to mean ''new and existing piping, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.'' An LNG facility is a type of pipeline facility. NFPA 59A–2026 does not define this term. The proposed definition includes LNG facilities to reinforce that an LNG facility is a type of pipeline facility.

Piping

PHMSA proposes to retain at § 193.5 but to revise for clarity the existing definition of ''piping'' in part 193. Section 193.2007 currently defines ''piping'' as ''pipe, tubing, hoses, fittings, valves, pumps, connections, safety devices or related components for containing the flow of hazardous fluids.'' NFPA 59A–2026 does not define this term. The proposed definition enhances specificity by replacing the general term ''pipe'' with the more precise ''line pipe'' language used elsewhere in PHMSA regulations.

[87] A 1980 final rule explicitly included power generation facilities within the scope of LNG facilities. *See* RSPA, *Liquefied Natural Gas Facilities; New Federal Safety Standards,* 45 FR 9184, 9189, 9197–98 (Feb. 11, 1980). PHMSA consistently has held this to be the case since, even as a reference to power generation facilities in § 193.2051 was omitted for other reasons. *See, e.g.,* RSPA, *Pipeline Safety: Incorporation of Standard NFPA 59A in the Liquefied Natural Gas Regulations,* 65 FR 10958 (Mar. 1, 2000).

[88] 1 U.S.C. 1 (defining ''person'' to ''include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals'').

Transfer Piping

PHMSA proposes to retain at § 193.5 but to revise for clarity the existing definition of ''transfer piping'' in part 193. Section 193.2007 currently defines ''transfer piping'' as ''a system of permanent and temporary piping used for transferring hazardous fluids between any of the following: Liquefaction process facilities, storage tanks, vaporizers, compressors, cargo transfer systems, and facilities other than pipeline facilities.'' PHMSA believes that, as currently written, the phrase ''a system of permanent and temporary piping'' might imply the transfer system must include both permanent and temporary piping for the term to meet the definition, which is not the case.[89] Therefore, PHMSA proposes to revise the definition of ''transfer piping'' to mean ''a system of permanent or temporary piping, or both, used for transferring hazardous fluids between any of the following: liquefaction process facilities, storage tanks, vaporizers, compressors, cargo transfer systems, and facilities other than pipeline facilities.''

Transfer System

PHMSA proposes to retain at § 193.5 the existing definition of ''transfer system'' in part 193. Section 193.2007 currently defines ''transfer system'' to ''include [ ] transfer piping and cargo transfer systems.'' NFPA 59A–2026 does not define a transfer system; however, the term is used throughout the document and part 193. PHMSA proposes to retain the definition to support operators' understanding of the regulations.

Vaporization

PHMSA proposes to retain at § 193.5 the existing definition of ''vaporization'' in part 193. NFPA 59A–2026 does not define vaporization; however, the term is used throughout the document and part 193. PHMSA proposes to retain the definition to support operators' understanding of the regulations.

B.4. Section 193.7—Rules of Regulatory Construction

PHMSA proposes to revise the requirements in the existing § 193.2009 and to relocate them to a new § 193.7. The provision defines regulatory terms used in part 193, such as ''must'' and ''shall.''

[89] *See* PHMSA, PI–10–0200, *Interpretation Response re Mount Bay Hope Liquefied Natural Gas Transfer System* (Mar. 25, 2010), available at: *https://www.phmsa.dot.gov/regulations/title49/interp/pi-10-0020* (discussing definition of ''transfer piping'' and ''transfer system'').

B.5. Section 193.9—What documents are incorporated by reference partly or wholly in this part?

PHMSA proposes to incorporate by reference new or updated editions of consensus industry standards currently referenced in part 193. PHMSA also proposes to incorporate by reference additional consensus industry standards to improve enforceability. Below is a list of new or updated standards proposed for incorporation by reference into part 193; any standards not listed below that are currently incorporated by reference into PHMSA regulations would no longer be incorporated by reference into part 193.

As discussed in section IV.A. above, PHMSA proposes to incorporate the mandatory provisions in the latest 2026 edition of NFPA 59A as the core of its regulatory framework for LNG facilities. NFPA 59A–2026 is therefore discussed first in this section IV.B.5, with other standards proposed to be incorporated by reference in PHMSA regulations appearing by the issuing standards development organizations thereafter. Most of the standards listed thereafter for incorporation by reference within part 193 are listed as mandatory references in chapter 2 of NFPA 59A–2026.

PHMSA also proposes incorporation by reference of one additional standard currently incorporated by reference at § 193.2013 and another standard informing compliance with the alternative risk-based O&M approach at subpart F. In contrast, PHMSA does not propose to include within § 193.9 standards not discussed below—even if those standards were listed among the mandatory references listed in NFPA 59A–2026 chapter 2 or the informational references within NFPA 59A–2026 Annex C. Instead, those standards should be considered non-binding guidance assisting operators in developing their part 193 compliance strategies. Similarly, PHMSA does not propose to incorporate by reference some of the consensus industry standards discussed in section IV.G below, even as PHMSA understands those resources could function as non-binding guidance informing operators' development of the risk-based O&M alternative framework mandated by section 110 of the PIPES Act of 2020. PHMSA invites public comment on whether to incorporate any industry standard referenced in NFPA 59A–2026 or otherwise applicable to the LNG industry.

The standards listed below for inclusion within the new § 193.9 are reasonably available to interested parties in several ways. First, PHMSA has negotiated agreements with some standards development organizations to make viewable copies of the standards available to the public at no cost. Organizations that have agreed to the public access requirements of the statutory mandate discussed above include the American Petroleum Institute (API), the American Gas Association (AGA), ASTM International (formerly the American Society for Testing and Materials), and the National Fire Protection Association (NFPA). Those organizations' standards can be accessed through the websites listed in the proposed § 193.9 regulatory text. Second, interested persons may obtain (on loan from PHMSA) physical copies of standards issued by organizations with which PHMSA has not at the time of publication of this NPRM been able to reach a general agreement for free online access. Those organizations include the American Society of Mechanical Engineers (ASME), the American Society for Nondestructive Testing (ASNT), American Concrete Institute (ACI), American Society of Civil Engineers (ASCE), Brazed Aluminum Plate-fin Heat Exchanger Manufacturers' Association (ALPEMA), Center for Chemical Process Safety (CCPS), Compressed Gas Association (CGA), CSA Group (CSA), International Society of Automation (ISA), National Board of Boiler and Pressure Vessel Inspectors (NBBI), and UL Solutions. Interested persons seeking a loan of a physical copy of a standard issued by those organizations may contact the PHMSA standards library (at the email address: *phmsaphpstandards@dot.gov;* such requests should include a phone number, physical address, and an email address), or through the contact information listed in the proposed § 193.9 amendatory text. Additional information regarding standards availability can be found at *https://www.phmsa.dot.gov/standards-rulemaking/pipeline/standards-incorporated-reference.*

NFPA 59A–2026

As discussed in section IV.A. above, PHMSA proposes to incorporate by reference into part 193 the mandatory provisions in the 2026 edition of NFPA 59A. PHMSA proposes to delete all existing references to the 2001 and 2006 editions of NFPA 59A. NFPA 59A–2026 provides minimum fire protection and safety requirements for the location, design, construction, security, operation, and maintenance of liquefied natural gas (LNG) plants.

Standards Incorporated by Reference in NFPA 59A–2026

PHMSA proposes to incorporate by reference into part 193 certain consensus industry standards that are referenced in the mandatory provisions in chapter 2 of NFPA 59A–2026. PHMSA identifies these new standards in the table below, which would be incorporated into the new § 193.9. PHMSA has reviewed the content and preliminarily concluded that each standard contributes to the improvement of public safety. PHMSA notes in the table below the provisions of NFPA 59A–2026 that are proposed for incorporation and the purpose for doing so. PHMSA solicits comment on these provisions and on any additional standards that should be incorporated by reference within a final rule.[90]

BILLING CODE 4910–60–P

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
NFPA 13, Standard for the Installation of Sprinkler Systems (2025)	• 16.2.1.5 (fire protection systems design, engineering, and installation requirements) • 16.5.4 (fire protection water system) • 18.11.10.4 (maintenance requirements for fire protection and hazard detection control systems)	Contains minimum requirements for design and installation of automatic fire sprinkler systems and exposure protection sprinkler systems
NFPA 14, Standard for the Installation of Standpipe and Hose Systems (2024)	• 16.2.1.5 (fire protection systems design, engineering, and installation requirements) • 16.5.4 (fire protection water system) • 18.11.10.4 (maintenance requirements for fire protection and hazard detection control systems)	Contains minimum requirements for installation of standpipes and hoses in water-based fire protection systems
NFPA 15, Standard for Water Spray Fixed Systems for Fire Protection (2022)	• 16.2.1.5 (fire protection systems design, engineering, and installation requirements) • 16.5.4 (fire protection water system) • 18.11.10.4 (maintenance requirements for fire protection and hazard detection control systems)	Contains minimum requirements for design, installation, maintenance, and testing of water spray fixed fire protection systems

[90] PHMSA acknowledges that the above table does not identify every mandatory standard listed in chapter 2 of NFPA 59A–2026. PHMSA has tried to limit the standards proposed for incorporation by reference to those that are most critical to the understanding and enforceability of the design, installation, construction, and operations and maintenance requirements in NFPA 59A–2026.

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection (2025)	• 16.2.1.5 (fire protection systems design, engineering, and installation requirements) • 16.5.4 (fire protection water system) • 18.11.10.4 (maintenance requirements for fire protection and hazard detection control systems)	Contains minimum requirements regarding the design and installation of pumps supporting liquid fire protection systems
NFPA 22, Standard for Water Tanks for Private Fire Protection (2023)	• 16.2.1.5 (fire protection systems design, engineering, and installation requirements) • 16.5.4 (fire protection water system) • 18.11.10.4 (maintenance requirements for fire protection and hazard detection control systems)	Contains minimum design, construction, installation, and maintenance of tanks and accessory equipment supplying water for private fire protection systems
NFPA 24, Standard for the Installation of Private Fire Service Mains and Their Appurtenances (2025)	• 16.2.1.5 (fire protection systems design, engineering, and installation requirements) • 16.5.4 (fire protection water system) • 18.11.10.4 (maintenance requirements for fire protection and hazard detection control systems)	Contains robust requirements for installation of private fire service mains supplying water to various water-based fire protection systems in industrial applications
NFPA 30, Flammable and Combustible Liquids Code (2024)	• 7.5.1 (design and construction requirements for hazardous fluid storage containers and equipment) • 13.3.1 (design and construction requirements for flammable or combustible liquid dikes, impounding walls, and drainage channels)	Contains robust requirements for safeguarding against fire and explosion hazards from storing, dispensing, handling, transferring, and using flammable and ignitable liquids within indoor and outdoor liquid storage containers and tanks, piping systems, storage areas, and processing facilities
NFPA 37, Standard for the Installation and Use of Stationary	• 7.6.8 (combustion engine and gas turbine installation requirements)	Contains installation requirements for reduction of fire hazards associated with stationary combustion engines and gas turbines

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
Combustion Engines and Gas Turbines (2024)		
NFPA 51B, Standard for Fire Prevention During Welding, Cutting and Other Hot Work (2024)	• 4.11.2 (welding, cutting, and hot work requirements for construction, installation, and maintenance)	Contains robust requirements governing hot work associated with welding, cutting, heat treating, grinding, and other applications
NFPA 54, National Fuel Gas Code (2024)	• 10.2.1.3 (design, construction, installation and other requirements for process piping for fuel gas systems)	Contains robust requirements for the safe design, installation, operation, maintenance, purging, and inspection of piping, equipment, accessories, and appliances using or containing fuel gas
NFPA 56, Standard for Fire and Explosion Prevention During Cleaning and Purging of Flammable Gas Piping Systems (2023)	• 18.7.5.4 (requirements for cleaning, drying, purging, and tightness testing in maintenance and other activities)	Contains robust operating, notification, and training procedures for purging systems of hazardous fluids to reduce the risks of fire and explosions during pipe system maintenance
NFPA 58, Liquefied Petroleum Gas Code (2024)	• 7.5.1 (design and construction requirements for hazardous fluid storage containers and equipment) • 13.3.2 (design and construction requirements for dikes, impounding walls, and drainage channels for LPG) • 15.6.2 (design and construction requirements for LPG tank vehicles)	Contains robust material, design, construction and other requirements for protection against hazards associated with releases from liquefied petroleum (LP) gas (*e.g.*, propane) systems
NFPA 59, Utility LP-Gas Plant Code (2024)	• 7.5.1 (design and construction requirements for hazardous fluid storage containers and equipment) • 13.3.2 (dikes, impounding walls, and drainage channels for LPG)	Contains robust material, design, construction and other requirements for protection against hazards associated with releases from liquefied petroleum (LP) gas (*e.g.*, propane) systems in peak shaving or mobile/temporary LNG facilities

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
NFPA 68, Standard on Explosion Protection by Deflagration Venting (2023)	• 12.6(1) (design requirements for fire and explosion control in facility rooms containing ignitable fluids) • 13.6(3) (design and construction requirements allowing for enclosed drainage channels for ignitable fluids)	Contains robust design, construction, operations, and maintenance requirements for fire and explosion protection devices and systems intended to vent combustion gases and pressures from a deflagration within enclosures
NFPA 70, National Electrical Code (2026)	• 11.9.1 (design and construction requirements for electrical equipment and wiring) • 11.9.2 (installation requirements for fixed electrical equipment and wiring within certain electrically classified areas) • 11.9.6 (sealing and isolation requirements for interfaces between ignitable fluid system electrical conduit or wiring systems)	Contains robust requirements for material, design, installation, maintenance and other requirements to provide protection against fire and explosive hazards associated with electrical systems
NFPA 72, National Fire Alarm and Signaling Code (2025)	• 16.2.1.5 (flammable gas detection system design, installation, and maintenance) • 16.4.5 (flammable gas detection system design, installation, and maintenance) • 16.4.6 (flammable gas detection system integration testing)	Contains robust requirements for the application, installation, location, performance, and inspection, testing, and maintenance of fire alarm and emergency communications systems
NFPA 85, Boiler and Combustion Systems Hazards Code (2023)	• 18.8.3 (commissioning requirements for fired heaters, boilers, and pressure vessels)	
NFPA 86, Standard for Ovens and Furnaces (2023)	• 18.8.3 (commissioning requirements for fired heaters, boilers, and pressure vessels)	
NFPA 101, Life Safety Code (2024)	• Table 5.3.2.11, FNc (radiant heat flux limits)	Contains robust construction, personnel protection, emergency communication, occupancy, and other requirements to minimize risk of personal injury from smoke, heat, and toxic gasses

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
NFPA 110, Standard for Emergency and Standby Power Systems (2025)	• 4.8.2(3)(a) (installation requirements for auxiliary generators as secondary source of electrical power)	Contains robust design, installation, maintenance, and other requirements for emergency and standby power systems
NFPA 274, Standard Test Method to Evaluate Fire Performance Characteristics of Pipe Insulation (2023)	• 10.3.1.4(4) (fire resistance requirements for materials used in piping insulation)	Contains testing requirements for determining fire performance characteristics of pipe insulation assemblies
NFPA 496, Standard for Purged and Pressurized Enclosures for Electrical Equipment (2024)	• 11.9.4 (design and installation requirements for electrical equipment installed within enclosures in electrically classified areas)	Contains robust requirements for designing and operating purged and pressurized electrical enclosures to reduce the risk of fires, explosions, and other dangers
NFPA 600, Standard on Fire Brigades (2025)	• 16.2.2(9) (requirements for determination of personal protective equipment and training requirements for emergency response personnel) • 16.7.3 (requirements for personal protective equipment and training requirements for emergency response personnel)	Contains robust requirements for organizing, operating, training, and equipping fire brigades
NFPA 750, Standard on Water Mist Fire Protection Systems (2023)	• 16.2.1.5 (fire protection systems design, engineering, and installation requirements) • 16.5.4 (fire protection water systems) • 18.11.10.4 (maintenance requirements for fire protection and hazard detection control systems)	Contains minimum requirements for design, installation, maintenance, and testing of water mist fire protection systems
NFPA 1225, Standard for Emergency Communications Services (2022)	• 16.2.1.5(19) (fire protection design, installation, and testing requirements • 18.11.10.4 (inspection and testing for hazard monitoring systems)	Contains minimum requirements for design, installation, maintenance, and testing of emergency communications systems

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
NFPA 5000, Building Construction and Safety Code (2024)	• Table 5.3.2.10, FNc (radiant heat flux limits)	Contains robust requirements for the design, construction, materials, and location of buildings and structures to protect against environmental and other hazards
ACI 304R, Guide for Measuring, Mixing, Transportation and Placing of Concrete (2000, reapproved 2009).	• 4.5.4 (design and construction requirements for nonstructural concrete for incidental nonstructural uses)	Contains robust requirements on the handling, measuring, mixing, and installation of concrete used in structures
ACI 318, Building Code Requirements for Structural Concrete and Commentary. (2025)	• 4.5.1.1 (material and design requirements for concrete structures that are not LNG containers) • 4.5.5.2 (minimum reinforcement requirements for concrete in incidental nonstructural uses)	Contains robust requirements for the design and construction of structural concrete buildings and non-building structures
ACI 376, Refrigerated Liquefied Gas Containment for Concrete Structures – Code Requirements and Commentary (2023)	• 6.3.2.3 (design and construction of outer concrete containment for double/full/membrane-containment tank systems used as containers of LNG or flammable refrigerants) • 8.2.1.3 (design and construction requirements for concrete and metal-lined composite concrete containers in an LNG storage tank system) • 8.4.8.2 (design and construction requirements governing LNG tank system container drying, purging, and cooling) • 8.4.11.1 (Stationary LNG tank systems foundation design requirements) • 8.4.13.1 (Stationary LNG concrete container design, construction, inspection, and testing requirements) • 8.4.13.3 (Requirements for non-metallic coatings on stationary LNG concrete containers) • 8.4.14.1.5 (MCER response spectral acceleration requirements in connection	Provides minimum requirements for the design, construction, testing, and inspection of reinforced concrete and prestressed concrete structures for the storage and containment of refrigerated liquefied gases

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
	with maximum considered tsunamis for stationary LNG storage tanks) • 8.4.13.6.5.3 (vertical response spectrum reduction factors for stationary LNG storage tanks) • 8.4.14.9 (triaxial seismic monitoring instrumentation for LNG storage tanks) • 8.4.14.12 (design requirements for stationary LNG storage tank systems and structural components)	
Standards of the Brazed Aluminum Plate-Fin Heat Exchanger Manufacturers Association (2024)	• 7.6.7.2 (design and fabrication requirements for brazed aluminum plate fin heat exchangers)	Contains robust requirements for design, manufacture, installation, and use of brazed aluminum plate-fin heat exchangers
API 510, Pressure Vessel Inspection Code: In-service Inspection, Rating, Repair, and Alteration (2023)	• 18.11.10.7.1(2) (inspection intervals for certain relief valves protecting hazardous fluid components)	Contains robust requirements for the in-service inspection, repair, alteration, and rerating activities for pressure vessels and pressure-relief devices in hydrocarbon and chemical process vessels
API RP 576, Inspection of Pressure-Relieving Devices (2024)	• 18.11.10.7.2(2) (set-point testing intervals for certain relief valves protecting hazardous fluid components)	Contains recommended inspection and repair practices for self-actuated pressure-relieving devices employed in the oil and gas and petrochemical industries
API Spec 6D, Specification for Pipeline and Piping Valves, 2021 edition w/ Addenda 1–3 (2025) and Erratas 1–3 (2023) (2024)	10.3.4.1(2) (material, design, construction, and installation requirements for valves on piping systems)	Contains requirements for the design, manufacturing, materials, welding, quality control, assembly, testing, marking, documentation, and process controls of valves employed in the oil and gas and petrochemical industries
API Std 620, Design and	• 3.3.32 (definition of LNG storage tank)	Contains requirements on the design, and construction of

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
Construction of Large, Welded, Low-Pressure Storage Tanks, 2013 edition w/ Addenda 1–4 (2025) and Errata 1 (2025)	• 8.2.1.2 (design and construction requirements for metal containers on stationary LNG storage tank systems) • 8.4.12 (design and construction requirements for welded metal containers used in low-pressure tank systems for stationary LNG storage) • 8.4.13.4 (material requirements for metallic barriers incorporated in concrete containers used in stationary LNG storage) • 8.4.14.1.5 (MCER response spectral acceleration requirements in connection with maximum considered tsunamis for stationary LNG storage tanks) • 8.4.14.8 (stationary LNG tank system seismic design requirements) • 8.4.14.12 (design requirements for stationary LNG storage tank systems and structural components)	large, welded, low-pressure carbon steel above ground storage tanks for use in the oil and gas and petrochemical industries
API Std 625, Tank Systems for Refrigerated Liquefied Gas Storage, 2010 edition w/ Addenda 1–5 (2025)	• 8.2.1 (design and construction requirements for stationary LNG storage tank systems) • 8.3.3.1 (stationary LNG tank system marking requirements) • 8.4.2 (design and construction requirements for piping in stationary LNG tank storage systems) • 8.4.7.3 (design requirements for insulation on LNG storage tank systems) • 8.4.8.2 (design and construction requirements governing LNG tank system container drying, purging, and cooling) • 8.4.14.7 (seismic design requirements for secondary liquid container or impounding system on single/double/full membrane tanks used in stationary LNG storage) • 17.6.2 (requirements governing pipe penetration positions on double and full containment tank systems in stationary LNG storage)	Contains robust requirements design, construction, performance criteria, accessories and appurtenances, quality assurance, insulation, and testing/commissioning of low pressure, aboveground, vertical, and cylindrical tank systems storing liquefied gases requiring refrigeration
API Std 650, Welded Tanks	• 3.3.32 (storage tank design definition)	Contains minimum requirements for material, design, fabrication, erection,

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
for Oil Storage (2021)		and inspection of aboveground, welded oil storage tanks
API Std 2510, Design and Construction of Liquefied Petroleum Gas (LPG) Installations (2020)	• 7.5.1 (design and construction requirements for containers and equipment for hazardous fluid systems other than LNG) • 13.3.2 (design and construction requirements for dikes, impounding walls, and drainage channels for LPG systems)	Contains minimum requirements for the design and construction of liquefied petroleum gas storage vessels, loading and unloading systems, piping, and related equipment at marine and pipeline terminals, natural gas processing plants, refineries, petrochemical plants, and tank farms
ASCE/SEI 7, Minimum Design Loads and Associated Criteria for Buildings and Other Structures w/ Supplement 2 (2022)	• 8.3.2.1 (requirements for determining design wind, flood, and snow loads for LNG tank systems and LNG storage containers) • 8.3.2.2 (requirements for design wind speed for LNG storage containers and other facilities) • 8.4.11.2.2 (requirements governing performance of liquefaction evaluation within pre-design subsurface investigation and evaluation for stationary LNG storage foundations) • 8.4.14.1.1 (requirements governing site-specific investigation of site seismic ground motion and response spectra for seismic design of land-based, field-fabricated LNG tank systems) • 8.4.14.1.2 (requirements governing determination of the maximum considered earthquake parameters in seismic design of land-based, field-fabricated LNG tank systems) • 8.4.14.1.3.1 (requirements governing determination of the maximum considered tsunami parameters in seismic design of land-based, field-fabricated LNG tank systems) • 8.4.14.1.3.2 (requirements governing resistance to tsunamis of outer container foundation in seismic design of land-based, field-fabricated LNG tank systems) • 8.4.14.4.2 (requirements governing determination of operating basis earthquake spectra for design of land-	Contains robust structural design requirements for a broad spectrum of environmental hazards

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
	based, field-fabricated LNG tank systems) • 8.4.14.12.1 (requirements pertaining to soil-structure interaction in seismic design of land-based, field-fabricated LNG tank systems) • 8.4.14.12.2 (requirements pertaining to soil-structure interaction in seismic design of land-based, field-fabricated LNG tank systems) • 8.4.14.12.3 (requirements pertaining to soil-structure interaction in seismic design of land-based, field-fabricated LNG tank systems) • 8.5.2.1 (requirements governing seismic design of land-based, shop-built ASME container design and construction) • 10.2.2.1(3) (seismic design requirements for Classification C piping systems) • 10.2.2.2 (analysis requirements in seismic design for piping systems and components) • 12.2.1.4 (general LNG plant facilities Classification A buildings, equipment, piping, and structures design resistance requirements against tsunami, wind, ice, flood and snow hazards) • 12.2.2 (general LNG plant facilities Classification B buildings, equipment, piping, and structures design resistance requirements against tsunami, wind, ice, flood and snow hazards) • 12.2.3 (general LNG plant facilities Classification c buildings, equipment, piping, and structures design resistance requirements against tsunami, wind, ice, flood and snow hazards)	
ASME B31.1, Power Plant Piping (2024)	• 18.8.2 (requirements governing commissioning of power plant piping)	Contains robust requirements for the design, materials, fabrication, erection, test, inspection, operation, and maintenance of piping systems used in power generation and industrial facilities

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
ASME B31.3, Process Piping (2024)	• 8.5.1.12 (design requirements for process piping in ASME containers in stationary LNG storage) • 10.2.1 (design requirements for process piping) • 10.2.4 (requirements governing expansion and contraction of process piping in ASME LNG containers) • 10.3.2.2 (material requirements for process piping in ASME LNG containers) • 10.3.2.3 (material requirements for process piping components in ASME LNG containers) • 10.3.3.3.1 (material, design and construction of bends in process piping within ASME LNG containers) • 10.3.3.3.3(3–4) (verification requirements for field bends fittings on process piping within ASME LNG containers) • 10.3.3.5 (material and design requirements for use of compression-type coupling fittings on process piping within ASME LNG containers) • 10.3.4.1 (material, design, construction, and installation requirements for valves on piping systems) • 10.4.1.3 (installation requirements for tubing joints on piping systems and components) • 10.4.1.4 (installation requirements governing prohibition of expanded, caulked, and pipe joints on piping systems and components) • 10.4.1.5 (installation requirements for design of special components on piping systems and components) • 10.4.1.6 (calculations for piping joint installation) • 10.4.1.9.1 (installation requirements for flanged connections on piping systems and components) • 10.4.3 (installation requirements for welding and brazing on piping systems and components)	Contains robust requirements for design, fabrication, assembly, erection, examination, inspection, and testing of process plant pipe materials and components in the petrochemical and other industries

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
	• 10.6.4 (design requirements for piping supports for piping systems and components) • 10.8 (general requirements for inspection, exam, and testing of piping systems and components) • 10.10.2 (general requirements for the design, installation, and testing of piping and valves on safety relief systems) • 10.13.2 (requirements for design, fabrication, examination, testing, and inspection of inner pipe assembly within cryogenic pipe-in-pipe systems) • 10.13.3 (requirements for design, fabrication, examination and testing of outer pipe assembly within cryogenic pipe-in-pipe systems) • 10.13.4.2 (requirements for design, fabrication, examination and testing of outer jacket assembly used as secondary containment within cryogenic pipe-in-pipe systems) • 17.8.2 (requirements governing hazardous fluid process piping) • 18.8.2 (requirements governing commissioning of LNG facility piping)	
ASME B31.4, Pipeline Transportation Systems for Liquids and Slurries (2022)	• 18.8.2 (requirements governing commissioning of LNG facility piping)	Contains robust requirements for the design, materials, construction, assembly, inspection, testing, operation, and maintenance of liquid hydrocarbons and other liquids
ASME B31.5, Refrigeration Piping and Heat Transfer Components (2022)	• 10.3.4.1 (material, design, construction, and installation requirements for valves on piping systems) • 18.8.2 (requirements governing commissioning of LNG facility piping)	Contains robust requirements for materials, design, fabrication, assembly, erection, testing and inspection of refrigerant piping, heat transfer components, and secondary coolant piping
ASME B31.8, Gas Transmission and Distribution Piping Systems (2022)	• 10.3.4.1 (material, design, construction, and installation requirements for valves on piping systems) • 18.8.2 (requirements governing commissioning of LNG facility piping)	Contains robust requirements for materials, design, fabrication, assembly, erection, testing and inspection of as transmission and distribution piping systems in gas service

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
Boiler and Pressure Vessel Code (2023)	• 3.3.5.2 (definition of pressure vessel) • 7.3.2(2–3) (requirements governing welding or brazing in installation of process equipment) • 7.6.3 (design and fabrication requirements for boilers in process equipment) • 7.6.6 (design and fabrication requirements for pressure vessels in process equipment) • 7.6.7 (design and fabrication requirements for brazed aluminum plate fin heat exchangers) • 8.2.2 (design, construction, and installation requirements for ASME containers) • 8.3.3.2 (identification requirements for LNG tank systems and ASME containers in stationary LNG storage) • 8.5.1.3 (inner container welding requirements for ASME containers in stationary LNG storage) • 8.5.1.4.1 (material requirements for the outer containers of ASME containers in stationary LNG storage) • 8.5.1.4.2 (requirements for use of vacuum isolation for the outer containers of ASME containers in stationary LNG storage) • 8.5.1.4.3 (design requirements for certain heads and spherical outer containers within ASME containers in stationary LNG storage) • 8.5.1.5 (material, design, construction requirements for single-walled containers within ASME containers in stationary LNG storage) • 8.5.1.5.8 (non-destructive testing requirements for certain ASME containers used in stationary LNG storage) • 8.5.1.8.2 (material requirements for piping on ASME containers) • 8.5.1.12 (design and installation requirements for piping on ASME containers)	Contains robust requirements for materials, design, manufacturing, and construction of boilers and pressure vessels in industrial applications

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
	• 8.5.1.13 (ASME container piping compliance documentation requirements) • 8.5.2.1 (seismic design requirements for shop-built ASME containers used in stationary LNG storage) • 8.5.4 (testing requirements for inner containers of certain ASME containers used in stationary LNG storage) • 10.2.1 (ASME LNG container process piping design and construction requirements) • 10.4.2.3(1) (shutoff valve installation requirements) • 10.4.3 (welding and brazing requirements for installation of process piping systems and components) • 10.8.4.1 (NDE methods and personnel qualifications for process piping) • 17.1.2 (small-scale LNG requirement threshold criteria) • 17.2 (small-scale LNG control room requirements) • 18.8.3 (requirements governing boiler and pressure vessel commissioning)	
ASTM E84, Standard Test Method for Surface Burning Characteristics of Building Materials (2024)	• 3.3.15 (flame spread index) • 10.3.1.3 (fire resistance requirements for materials used in piping insulation)	Contains standardized testing protocols to determine materials' behavior (including flame spread observation and smoke density) in response to heat and flame exposure
ASTM E136, Standard Test Method for Assessing Combustibility of Materials Using a Vertical Tube Furnace at 750°C (2024)	• 4.10 (criteria for noncombustible material) • 10.3.1.4 (fire resistance requirements for materials used in piping insulation)	Contains test method to assess the combustibility of building materials when exposed to high temperatures
ASTM E2652, Standard Test Method for Assessing	• 4.10 (criteria for noncombustible material)	Contains test method to assess the combustibility of building materials when exposed to high temperatures

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
Combustibility of Materials Using a Tube Furnace with a Cone-shaped Airflow Stabilizer, at 750°C (2022)		
CGA 341, Specification for Insulated Cargo Tank Specification for Nonflammable Cryogenic Liquids (2023)	• 8.5.1.4.2 (requirements for use of vacuum isolation for the outer containers of ASME containers in stationary LNG storage) • 15.6.2(1) (design and construction for LNG tank vehicles)	Contains design, material, and construction requirements for insulated cargo tanks used in transportation of nonflammable cryogenic liquids
CGA S-1.3, Pressure Relief Device Standards—Part 3—Stationary Storage Containers for Compressed Gases (2024)	• 8.5.1.3.4 (requirements governing sizing of inner vessel relief devices on ASME containers in stationary LNG storage)	Contains minimum design and other requirements for pressure relief devices used on compressed gas storage containers constructed in accordance with the ASME Boiler & Pressure Vessel Code
CSA B51, Boiler, Pressure Vessel and Pressure Piping Code (2024)	• 3.3.5.2 (definition of pressure vessel) • 7.6.3 (design and fabrication requirements for boilers in process equipment) • 7.6.6 (design and fabrication requirements for pressure vessels in process equipment) • 7.6.6.1 (design and fabrication of shell and tube heat exchangers in process equipment) • 8.5.4.1 (testing requirements for inner container of certain ASME containers used in stationary LNG storage) • 8.5.4.2 (testing requirements for field-fabricated inner containers of certain ASME containers used in stationary LNG storage) • 8.5.4.3 (testing requirements for field-fabricated outer containers of certain	Contains design, construction, installation, operations, testing, and repair requirements for boilers, pressure vessels, pressure piping, and fittings in industrial applications

STANDARD	NFPA 59A-2026 SECTIONS REFERENCING (SUBJECT)	SUMMARY DESCRIPTION OF STANDARD
	ASME containers used in stationary LNG storage)	
CSA C22.1, Canadian Electrical Code (2024)	• 11.9.1 (design and construction requirements for electrical equipment and wiring) • 11.9.6.4 (limitations on use of certain secondary seal compliance methods to comply with conduit sealing requirements)	Contains robust requirements for material, design, installation, maintenance and other requirements to provide protection against fire and explosive hazards associated with electrical systems.
ISA 12.27.01, Requirements for Process Sealing Between Electrical Systems and Flammable or Combustible Process Fluids (2016)	• 11.9.6 (sealing and isolation requirements for interfaces between ignitable fluid system electrical conduit or wiring systems)	Contains construction and testing requirements for process sealing between electrical systems and flammable or combustible process fluids.
UL 723, Test for Surface Burning Characteristics of Building Materials (2018, revised 2023)	• 3.3.15 (flame spread index definition) • 10.3.1.3 (fire resistance requirements for materials used in piping insulation)	Contains standardized testing protocols to determine materials' behavior (including flame spread observation and smoke density) in response to heat and flame exposure.
NBBI, NB 23, National Board Inspection Code, part 2, Inspection, Section 2 (2023)	• 18.10.10.7.1(1) (inspection intervals for certain relief valves protecting hazardous fluid components)	Contains protocols for performing and documenting inspection of pressure equipment in industrial applications.
ASNT SNT-TC-1A, Personnel Qualification and Certification in Nondestructive Testing (2020)	• 10.8.4.1 (NDE methods and personnel qualifications for process piping)	Contains standardized protocols for the qualification and certification of personnel to perform nondestructive testing of industrial equipment and materials.

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American Gas Association (AGA)

PHMSA also proposes to incorporate by reference in § 193.403(a) AGA's *Purging Manual,* Fourth edition, published in September 2018. The *Purging Manual* provides principles and general procedures for purging pipeline

systems containing flammable gas to maintain safety.

In this NPRM, PHMSA proposes new purging requirements in § 193.403, which are discussed in more detail in section IV.F.5. As part of those requirements, PHMSA proposes that purging be performed in accordance with the *Purging Manual* as well as NFPA 59A–2026. Chapter 1 of the *Purging Manual* contains requirements such as requiring operators to prepare written site-specific purging procedures and hazard assessments detailing the sequence of events, a predetermined rate of introduction of a purge medium, and verification of endpoints at properly vented locations. These steps must be followed and carried out by properly trained and qualified individuals. Chapter 1 further requires operators to plan for the safety of plant personnel, such as requiring appropriate personal protective equipment and the identification of hazardous materials. Chapter 6 of the *Purging Manual* contains specific purging requirements for different types of LNG storage tanks.

The Fourth edition of the AGA *Purging Manual* contains a substantial revision to the currently incorporated Third edition to include more comprehensive guidance and modern purging techniques. For example, chapter 1 now requires management of change, lock out/tag out, and instruction and assignment of personnel to be included in written plans. Chapter 6 also expands the general requirements and includes a description of LNG facilities and the physical properties of LNG. The Fourth edition adds LNG trucking cargo tanks to the purging requirements as well. Finally, the Fourth edition also changes the name of the standard from ''Purging Principles and Practices'' to ''Purging Manual.'' PHMSA believes that these updates will be beneficial to safety.

American Institute of Chemical Engineers, Center for Chemical Process Safety

PHMSA proposes to incorporate by reference into § 193.503 the Center for Chemical Process Safety's (CCPS's) *Guidelines for Hazard Evaluation Procedures* (*Guidelines*), Third edition, published in April 2008. The *Guidelines* provide principles and general procedures for performing process hazard assessments (PHAs) and evaluating and implementing of the results of PHAs. As discussed in section IV.G, PHMSA proposes in § 193.503 that FERC jurisdictional LNG facilities design and implement their subpart F, PHA-based O&M programs consistent with the *Guidelines.*

B.6. Section 193.11—Plans and Procedures

PHMSA proposes to revise the existing plans and procedures regulations in § 193.2017. First, PHMSA proposes to redesignate the current § 193.2017(a) as a new § 193.11(a) and to modify the regulation to specify that operators must maintain written plans and procedures in accordance with part 193 and NFPA 59A–2026. Currently, § 193.2017 requires operators to maintain plans and procedures and to make them available to PHMSA upon request. Each change to a plan or procedure must be available at the LNG plant for review and inspection within 20 days after the change is made. PHMSA's proposed modifications would retain the current requirements and adopt the provisions in NFPA 59A–2026.

PHMSA proposes to remove § 193.2017(b). Section 193.2017(b) currently states that operators must amend their plans and procedures as necessary to ensure safety. The same obligation is also imposed by regulation in § 190.206. To avoid unnecessary duplication, PHMSA proposes to delete § 193.2107(b) and to maintain this requirement in § 190.206.

PHMSA proposes to redesignate the existing § 193.2017(c) requirements for periodic review of plans and procedures with a new § 193.11(b). PHMSA further notes that, on or before the effective date of a final rule in this proceeding, operators would need to review, and if necessary, to update their plans and procedures to reflect the requirements of the new part 193.

PHMSA proposes in a new § 193.11(c) to require operators to record and to maintain a change log detailing changes to plans and procedures, showing revisions from the previous version. This change log is consistent with widely employed quality control practices to ensure documentation of effective plans and procedures to facilitate continual process improvement, system integrity evaluation, and failure investigations. Unless a different timeframe for specific plans and procedures is required by another provision of part 193 (and, by extension, NFPA 59A–2026), PHMSA proposes that operators keep a record of the change log for the lifetime of the component(s) governed by the procedures.

B.7. Section 193.13—Mobile and Temporary LNG Facilities

PHMSA proposes to update the regulations governing mobile and temporary LNG facilities currently found at § 193.2019.[91] These revisions involve a redesignation to a new § 193.13, as well as editorial changes to enhance readability. PHMSA proposes to align these regulations with the latest safety standards by requiring operators of mobile and temporary LNG facilities to follow the governing provisions in chapter 14 of NFPA 59A–2026.

PHMSA is proposing these changes to address the ambiguity in the existing language of § 193.2019. Similar to other provisions in part 193, § 193.2019 currently includes a broad reference to ''applicable sections of NFPA 59A–2001'' in describing the requirements applicable to mobile and temporary LNG facilities. The ''applicable'' provision of NFPA 59A–2001 (specifically, section 2.3.4) contains a limited set of personnel training, design, and operations requirements commensurate with the lower public safety risks posed by those facilities, but lacks threshold criteria defining which facilities are or are not eligible for those regulatory flexibilities. In fact, section 2.3.4 is directed principally at temporary LNG facilities, though NFPA 59A–2001 provides no criteria for distinguishing between ''temporary'' and more permanent, ''stationary'' LNG facilities. In addition, the language at current § 193.2019 is potentially overbroad in that it could be read to suggest mobile and temporary facilities are exempted from the entirety of part 193—including the provisions (regulatory definitions, statements of scope, etc.) of subpart A.

Chapter 14 of the updated NFPA 59A–2026 addresses these omissions and enhances the safety requirements governing mobile and temporary LNG facilities. In addition to being explicitly directed toward temporary and mobile LNG facilities, chapter 14 introduces a default, six-month durational criteria for distinguishing between ''mobile and temporary'' and other (*e.g.,* permanent) LNG facilities. Chapter 14 also includes a process that allows operators to extend that six-month period, either by requesting permission from PHMSA via a special permit application or by complying with additional safety and security requirements for permanent, small-scale LNG facilities.

Further, NFPA 59A–2026 chapter 14 contains more robust safety requirements as compared to section 2.3.4 of NFPA 59A–2001. Chapter 14 of

[91] PHMSA also solicits comment on whether to amend § 193.2019 (repeated in § 193.13 as proposed) to communicate better that PHMSA has regulatory authority to ensure compliance of mobile and temporary facilities with the requirements of part 193 (including those provisions of chapter 14 of NFPA 59A–2026 incorporated therein).

NFPA 59A–2026 retains all of its predecessor's content while introducing references to detailed new requirements for qualification and training of personnel; facility and process equipment design, construction and installation; fire protection systems and physical security; transfer operations; operation and maintenance; and corrosion protection.[92] NFPA 59A–2026 also explicitly authorizes the use of cryogenic PIP systems within mobile and temporary LNG facilities.

Lastly, PHMSA proposes to make clear that the provisions of part 193, subpart A apply to mobile and temporary LNG facilities in addition to the requirements in chapter 14 of NFPA 59A–2026. Consistent with current part 193 requirements, operators of mobile and temporary LNG facilities that meet the requirements of NFPA 59A–2026 would be exempt from the other requirements of part 193.

B.8. Section 193.15—Investigations of Failures

PHMSA proposes to retain and to update the failure investigation requirements currently found at § 193.2515. The proposed revisions include redesignating the current § 193.2515 as a new § 193.15 and adding requirements to improve the quality of information on failures at LNG facilities. The current requirements in § 193.2515 are similar to the incident analysis and documentation requirement at section 18.2.2(7) of NFPA 59A–2026. However, the NFPA provision is limited to safety-related incidents and has no minimum property damage threshold. And though section 18.5 of NFPA 59A–2026 helpfully requires operators to establish incident investigation procedures, the language within that provision provides few specifics on the content that must be included in those procedures. PHMSA proposes the following revisions to address these concerns.

First, in paragraph (a), PHMSA proposes to expand the scope of failure investigation requirements to include hazardous fluid releases. Section 193.2515(a) currently limits the failure investigation requirements to explosions, fires, LNG spills, or leaks. Adding hazardous fluid releases to the list will promote public safety and is consistent with the changes that PHMSA is proposing elsewhere to part 193.

Second, in paragraph (a), PHMSA proposes to expand the scope of the failure investigation requirements to include events that occur during commissioning or operation. This modification will ensure that investigations cover all phases of LNG facility development and operation and is consistent with the other changes that PHMSA is proposing elsewhere to part 193.

Third, in paragraph (a)(2), PHMSA proposes to increase the property damage threshold for failure investigations from the current $10,000 to align with the incident reporting requirements in part 191. When PHMSA introduced the property damage threshold in the failure investigation requirements in 1980, the incident reporting criteria did not include any comparable limitation and set a $5,000 property damage threshold for serious leaks requiring prompt telephonic reporting.[93] PHMSA subsequently amended the incident reporting requirements in part 191 to add a monetary property damage threshold, which is now adjusted on a periodic basis to account for inflation,[94] but has never updated the property damage threshold at § 193.2515. PHMSA proposes to address that omission by aligning the current language at § 193.2515 with the property damage threshold for LNG facility incident reporting in part 191. This change would account both for historic and future inflation and address concerns expressed by some commenters in responding to the recent ANPRMs that expanding the failure investigation requirements to include hazard fluids releases could significantly increase their compliance burdens with little safety benefit.[95]

In a new § 193.15(c), PHMSA proposes that operators maintain investigation records for a minimum of five years. The proposed five-year recordkeeping requirement is consistent with § 193.2521, which currently requires operators to maintain records from each inspection, test, and investigation for a period of at least five years. NFPA 59A requires tests, surveys, and inspection records to be maintained for the life of the facility but does not address the retention of investigation records. This five-year duration also aligns with the record retention requirements for maintenance activity on components prescribed in section 18.13.1 of NFPA 59A–2026, and the five-year incident investigation report recordkeeping requirements in the Occupational Safety and Health Administration (OSHA) process safety management (PSM) regulations at 29 CFR 1910.119(m)(7).

C. Subpart B—LNG Facility Siting

PHMSA's siting requirements for LNG facilities date to a rulemaking proceeding initiated in the 1970s and completed in 1980. As with the other regulations adopted in that proceeding, PHMSA incorporated multiple levels of conservatism into the siting requirements to address uncertainties and limitations in the data available at that time. Although PHMSA has updated certain aspects of those requirements over time, including by approving more modern versions of the models used to determine the amount of property that must be owned or controlled to site an LNG facility at a particular location, the underlying conservatism embodied in the 1980 regulations has remained largely unchanged. That degree of conservatism is no longer justified given the significant advancements in LNG safety that have occurred in the past two decades, many of which are reflected in the enhanced safety requirements throughout recent editions of NFPA 59A.

As discussed in more detail below, PHMSA is proposing substantial revisions to its siting requirements to address these concerns. First, PHMSA proposes adopting an updated version of the traditional, prescriptive approach for siting LNG facilities. The prescriptive approach would be consistent with the provisions in NFPA 59A–2026 chapter 5 and would serve as the default set of siting requirements. Second, PHMSA proposes adopting a more sophisticated quantitative risk assessment (QRA)-based approach for siting LNG facilities. The QRA-based approach would be consistent with the provisions in NFPA 59A–2026 chapter 19 and would only apply on an elective basis.

PHMSA believes that adopting these changes would eliminate much of the unnecessary conservatism embodied in the current regulations, generating significant cost savings without compromising safety. Additional information about the development of

[92] PHMSA notes that design, installation, and construction requirements in chapter 14 would—pursuant to the statutory retroactivity prohibitions at 49 U.S.C. 60103(c) and 60104(b)—not apply to existing mobile and temporary facilities as those facilities are relocated from place-to-place. However, PHMSA expects that the proposed spacing requirements at NFPA 59A–2026, Table 6.3.1 would apply to these facilities each time they are relocated given that those facilities are (by definition) relocated throughout their lifecycles.

[93] *See* MTB, *Liquefied Natural Gas Facilities; Federal Safety Standards,* 45 FR 70390, 70393–94 (Oct. 23, 1980).

[94] *See* RSPA, *Transportation of Natural and Other Gas by Pipeline; Annual Reports and Incident Reports,* 49 FR 18956 (May 3, 1984); PHMSA, *Pipeline Safety: Gas Pipeline Regulatory Reform,* 86 FR 2210 (Jan. 11, 2021).

[95] *See, e.g.,* Williams Cos., *Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7612.

PHMSA's siting regulations, and the proposed prescriptive and QRA-based siting approaches, is provided in the following sections.

C.1. Role of Siting in PHMSA's Safety Framework

By way of background, the siting requirements in subpart B date to a rulemaking proceeding initiated by one of PHMSA's predecessor agencies, the Materials Transportation Board (MTB), in the late 1970s. MTB undertook that effort to address concerns with the then-current version of the Federal safety standards for LNG facilities, which relied almost entirely on the provisions in a historical edition of NFPA.[96] MTB subsequently divided that rulemaking effort into two different proceedings, one of which focused on establishing O&M requirements for LNG facilities,[97] and the other of which focused on establishing design, construction, installation, testing, and siting requirements for LNG facilities.[98]

Of particular importance for this proceeding, MTB took a very conservative approach in both proceedings, issuing final rules in 1980 that included layers of mutually reinforcing requirements, many of which incorporated cautious assumptions or relied on near-worst-case scenarios selected to provide robust protective safety margins.[99] MTB recognized that this approach imposed significant costs on operators, but concluded that those costs were justified by the limited historical release data for LNG facilities and the potential consequences of an incident.

The original part 193 siting regulations were a product of that philosophy. Highlighting the lack of meaningful safety standards in effect at the time, MTB focused on addressing the risks associated with two hazards: (1) thermal radiation, *i.e.,* the amount of heat that would be produced if an LNG spill ignited and (2) vapor-gas dispersion, *i.e.,* the dimensions of the vapor-gas cloud that would form as a result of an LNG spill, which could ignite or act as an asphyxiant.[100] MTB proposed an inherently conservative approach employed in regulating other high-consequence industrial facilities to address these risks. MTB required owners or operators to exercise control over an ''exclusion zone,'' *i.e.,* a buffer area around an LNG facility that could not be accessed by the public.[101]

To provide broad safety margins, MTB required operators to use conservative assumptions (*e.g.,* emissive heat flux, flame length, flame tilt angle, and radiant heat exposure levels; neglect of active mitigation measures; assumption of 100 percent fatality or harm within exclusion zones) in calculating the extent of the exclusion zone for thermal radiation. The calculation needed to be made either by using a simple, default mathematical model that would yield ''conservatively safe exclusion zone[s]'' or by using an alternative, MTB-approved model that incorporated ''additional and more valid information when it becomes available.'' [102] MTB employed a similar approach in setting the boundaries of the exclusion zone for flammable vapor-gas dispersion, requiring the use of near-worst case assumptions (*e.g.,* a uniform concentration of methane half its actual lower flammable limit (LFL); default worst-case wind and atmospheric stability and design spill parameters) in response to an ignition scenario that MTB admitted was far less likely than the localized fire risk addressed in its thermal radiation hazard analysis.[103] This approach addressed probability of release characteristics and operating conditions by selecting assumptions MTB judged appropriately conservative in light of occurrence frequency and potential consequence magnitude.

Although subject to minor adjustments over time, the underlying approach of layering conservativism upon conservatism is still embodied in the current siting regulations. Subsequent rulemakings have adopted newer, and more accurate, models for calculating exclusion zones—even as they rejected stakeholder calls to update some of the conservative parameters that had been employed in addressing historical uncertainties.[104] PHMSA has continued to rely on legacy editions of NFPA 59A that incorporate additional layers of conservatism within the modeling of hazard distances (which subpart B regulations then translate into exclusion zones). Specifically, subpart B has since 2004 referenced NFPA 59A–2001 chapter 2's prescriptive siting requirements, which employ many of the conservative assumptions for modeling thermal radiation (section 2.2.3.2) and flammable vapor-gas (sections 2.2.3.3 and 2.2.3.4) hazards that PHMSA's predecessors had previously adopted in regulation.[105] In other places where NFPA 59A–2001 departed from historical, conservative modeling assumptions, PHMSA and its predecessors either retained those assumptions in subpart B text or supplemented them in FAQs.[106] These extra layers of conservatism affect the design and layout of LNG facilities, either by constraining the configuration or spacing of components and systems within a site or requiring the installation of additional onsite mitigation measures (*e.g.,* vapor shields) to accommodate the exclusion zone requirements.

Finally, PHMSA and its predecessors have supplemented the subpart B exclusion zone framework with additional siting requirements. For

[96] *See* MTB, *LNG Facilities; Federal Safety Standards,* 42 FR 20776, 20778 (advanced proposal Apr. 21, 1977).

[97] *See generally* MTB, *Liquefied Natural Gas Facilities; Federal Safety Standards,* 45 FR 70390, 70391 (Oct. 23, 1980) (describing safety value of each of the different operations and maintenance proposals for the new part 193).

[98] *See* MTB, *LNG Facilities; Federal Safety Standards,* 44 FR 8142, 8151 (proposed Feb. 8, 1979) (discussing the mutually-reinforcing and (at times) redundant layers of design, construction, and installation requirements).

[99] *See* RSPA, *LNG Facilities: Federal Safety Standards,* 45 FR 9220, 9221–92 (proposed Feb. 11, 1980) (evaluating operations and maintenance requirements); RSPA, *Liquefied Natural Gas Facilities; New Federal Safety Standards,* 45 FR 9184, 9186–87, 9195 (Feb. 11, 1980) (evaluating construction, design, installation, testing, and siting requirements).

[100] MTB, *LNG Facilities; Federal Safety Standards,* 42 FR 20776 (advanced proposal Apr. 21, 1977).

[101] Notably, exclusion area boundaries employed in the context of commercial nuclear power facilities pursuant to 10 CFR 100.11, which were often characterized as posing similarly high-consequence public safety risks to those posed by LNG facilities. *See, e.g.,* Comptroller General, Report No. EMD78–28, *Liquefied Energy Gases Safety, Vol. 1,* at 21–5 (July 31, 1978).

[102] *See* MTB, *LNG Facilities; Federal Safety Standards,* 44 FR 8142, 8149–50 (proposed Feb. 8, 1979); RSPA, *Liquefied Natural Gas Facilities; New Federal Safety Standards,* 45 FR 9184, 9191–94 (Feb. 11, 1980); MTB, *Liquefied Natural Gas Facilities; Reconsideration of Safety Standards for Siting, Design, and Construction,* 45 FR 57402, 57406–08 (Aug. 28, 1980).

[103] *See* MTB, *LNG Facilities; Federal Safety Standards,* 44 FR 8142, 8150–51 (proposed Feb. 8, 1979); RSPA, *Liquefied Natural Gas Facilities; New Federal Safety Standards,* 45 FR 9184, 9195 (Feb. 11, 1980); MTB, *Liquefied Natural Gas Facilities; Reconsideration of Safety Standards for Siting, Design, and Construction,* 45 FR 57401, 57047 (Aug. 28, 1980).

[104] *See* RSPA, *Liquefied Natural Gas Regulations—Miscellaneous Amendments,* 62 FR 8402 (Feb. 27, 1997) (adopting the LNGFIRE I computer model for thermal radiation hazards and the DEGADIS model for flammable vapor dispersion hazards); RPSA, *Pipeline Safety: Incorporation of Standard NFPA 59A in the Liquefied Natural Gas Regulations,* 65 FR 10950, 10952–53 (Mar. 1, 2000) (adopting LNGFIRE III for thermal radiation modeling while rejecting less demanding thermal radiation wind speed and flammable vapor cloud explosive limit assumptions).

[105] §§ 193.2051, 2057(a), 2059(a).

[106] *See, e.g.,* § 193.2059(b)(1) (assuming a safety factor of 2—or a 2.5 percent concentration of methane—when calculating hazard distances for flammable vapor cloud dispersion). PHMSA initially issued its LNG FAQs March 2014, and has supplemented or revised them ten times since, most recently in September 2025. PHMSA notes that even as it is proposing to discard some of the historical assumptions in LNG FAQs, operators would retain discretion to use those conservative, proven assumptions going forward as appropriate for their facility.

example, RSPA's incorporation by reference in 2004 of the siting requirements within chapter 2 of NFPA 59A–2001 introduced prescriptive requirements covering everything from soil and geotechnical site investigation (section 2.1.4) to process equipment spacing (section 2.2.6). PHMSA has also read broad language at section 2.1.1(d) of NFPA 59A–2001 to require operators to consider ''[o]ther [siting-related] factors,'' including releases of hazardous fluids other than LNG, in conducting their exclusion zone analyses.[107] These changes, when combined with the inherent conservatism used in developing the exclusion zone requirements, have resulted in a siting regime for LNG facilities that no longer appropriately reflects the risks to public safety, particularly given the significant advancements in industry standards and practices that have occurred in the past four decades.

C.2. Prescriptive Siting Requirements (NFPA 59A–2026, Chapter 5)

This rulemaking proposes to modernize PHMSA's default, prescriptive siting requirements in subpart B. These requirements are currently governed by a patchwork of industry standards, part 193 regulatory provisions, and non-binding guidance—all of which magnify the inherent conservatism already provided through the other requirements (design, installation, testing, construction, operations, and maintenance) in part 193. Although the LNG industry has an excellent safety record as discussed in section II.A.3.c above, PHMSA does not agree that the conservative approach traditionally used in the siting requirements is necessary to maintain that level of safety. Rather, PHMSA believes that a more modern approach consistent with the enhanced safety provisions in NFPA 59A–2026 can be used to determine whether an LNG facility can be safely sited at a particular location.

PHMSA therefore proposes to incorporate by reference into subpart B the prescriptive siting requirements in chapter 5 of NFPA 59A–2026. Those requirements would serve as the default siting provisions in lieu of the current reference to chapter 2 of NFPA 59A–2001. PHMSA also proposes to supplement the provisions in NFPA 59A–2026 chapter 5 with a handful of additional regulatory requirements in subpart B. Adopting these changes would align the siting requirements with the latest hazard modeling techniques and current standards and practices in the LNG industry. In addition, PHMSA proposes to codify or to eliminate current non-binding guidance on LNG facility siting to improve regulatory certainty and to reduce unnecessary compliance burdens. PHMSA expects the proposed changes to the default, prescriptive siting requirements in subpart B will reduce public safety risks, particularly when combined with the other safety-enhancing proposals discussed elsewhere in this NPRM.

a. Sections 193.101 and 193.103(a)—Improved Hazard Modeling Under NFPA 59A–2026

PHMSA proposes to incorporate by reference into new §§ 193.101 and 193.103 certain enhanced hazard assessment and modeling requirements from chapter 5 of NFPA–2026. Specifically, PHMSA proposes to incorporate sections 5.2.1, 5.2.2, and 5.3.2 of NFPA 59A–2026 into these regulations, subject to certain exceptions and supplemental provisions as discussed below. PHMSA proposes to incorporate by reference into other subparts of part 193 provisions in chapter 5 of NFPA 59A–2026 that are better understood as design, rather than siting, requirements. PHMSA's discussion of those proposals is included in section IV.D of this NPRM.

The hazard modeling requirements in subpart B are currently based on the provisions in chapter 2 of NFPA 59A–2001 and certain additional regulatory requirements. NFPA 59A–2001 at section 2.1.1(d)—and, by extension, PHMSA's subpart B regulations at § 193.2051—requires operators to evaluate all ''factors . . . that have a bearing on the safety of plant personnel and the surrounding public'' when siting a new LNG facility or making significant expansions or other alterations to an existing LNG facility. PHMSA guidance at LNG FAQ H1 characterizes that regulatory language as requiring evaluation of releases from systems containing any hazardous fluid.

In addition, § 193.2051 requires operators to consider the effects of failure of certain equipment (*e.g.,* storage tank penetrations, piping ruptures) resulting in the release of LNG in conducting a siting analysis. The specific LNG releases that must be considered, otherwise known as ''design spills,'' generally reflect industry understanding of (in some cases) worst-case, plausible failures based on historical data. Sections 193.2057 and 193.2059 require operators to use certain models to predict the extent of the thermal radiation and flammable vapor-gas dispersion that would result from such a failure. The models, authorized by regulation or approved by PHMSA after an evaluation, calculate ''hazard distances'' bounding a ''hazard footprint'' at certain prescribed thresholds or ''endpoints.'' [108] NFPA 59A–2001 (at sections 2.2.3.2 and 2.2.3.3) assigns escalating safety requirements based on the magnitude of safety consequence associated with different endpoints. Operators must establish (or otherwise maintain) legal control of all activities within hazard footprints bounded by endpoints correlating to the most consequential risks: fatality and irreversible harm. The exclusion zone requirements in subpart B incorporate these concepts from NFPA 59A–2001.

The hazard modeling requirements in chapter 5 of NFPA 59A–2026 are more advanced than the comparable provisions in NFPA 59A–2001, improve subpart B's hazard analyses with the risk profiles of modern facilities (many of which can contain large quantities of hazardous fluids other than LNG), and provide a more robust evaluation of hazard phenomena. For example, rather than providing that operators merely ''consider'' unspecified siting-related factors potentially affecting safety as provided by NFPA 59A–2001, NFPA 59A–2026 section 5.2.1 specifies illustrative factors (process hazards, security threats, adjacent facility hazards, weather and geological conditions, and safety measures incorporated in facility design and operational practices) for operators to consider in conducting site evaluations. In addition, section 5.3.2.13 of NFPA 59A–2026 provides more detailed requirements for qualitative consideration of the potential for cascading damage than the analogous provisions in section 2.2.3.6 of NFPA 59A–2001.[109]

[107] LNG FAQs, H1–H3. The expansion of part 193 siting requirements over time has been accompanied by expansion of other part 193 elements enhancing defense-in-depth from the safety risks of releases.

[108] *https://www.phmsa.dot.gov/pipeline/liquified-natural-gas/lng-exclusion-zones.* PHMSA has developed model evaluation protocols (MEPs) for source term calculation, flammable vapor cloud dispersion hazards, toxic vapor cloud dispersion hazards, vapor cloud explosion hazards, and boiling liquid expanding vapor cloud explosion hazards. PHMSA expects to issue an MEP for thermal radiation hazards in spring 2026.

[109] Although PHMSA has approved an MEP and MVD for boiling liquid expanding vapor explosion (BLEVE) hazards, PHMSA understands that neither NFPA 59A–2026 chapter 5, nor § 193.103 as proposed in this NPRM, necessarily require operators to model such hazards. Nor would each operator need to address the BLEVE hazards qualitatively in its siting evaluation pursuant to § 193.103 unless the characteristics of its facility suggest that the probability of a BLEVE hazard merits discussion among other cascading damage

Chapter 5 of NFPA 59A–2026 expands the requirements for hazard modeling as well. Rather than requiring that operators ''consider'' most releases of LNG and other hazardous fluids, section 5.3.2.1 of NFPA 59A–2026 explicitly requires modeling of additional hazards (including overpressure effects from vapor cloud explosions (VCEs), toxic effects from toxic vapor dispersion, and thermal radiation effects from fireballs) from releases of hazardous fluids generally. Chapter 5 also provides that such modeling should be informed by specific endpoints correlating to fatality and irreversible harm for each of these new hazard modeling requirements.[110]

b. Enhancements on NFPA 59A–2026 Hazard Modeling Requirements

PHMSA proposes a series of additional enhancements to the expanded hazard modeling requirements of chapter 5 of NFPA 59A–2026 through targeted subpart B provisions that are intended to address safety risks and lessons learned from recent LNG facility incidents, to ensure continuity with longstanding PHMSA guidance, and to facilitate implementation by operators.

Section 193.103(a)—Siting Package Submission

Consistent with the documentation requirements at NFPA 59A–2026 section 5.2.2, PHMSA proposes to codify LNG FAQ G7, which directs operators to submit a Design Spill Package to PHMSA with engineering drawings, piping and instrument drawings, reports from hazard analyses (including an exclusion zone), and similar items that will inform its review of siting analyses. In codifying this requirement, PHMSA proposes a comprehensive list of information needed in ensuring compliance with subpart B to provide additional regulatory certainty. PHMSA expects that, when submitting the information specified in § 193.103(a), operators will provide it in the form and manner consistent with LNG FAQ DS3.

PHMSA has clarified in its proposed regulatory text codifying the LNG FAQ DS3 submission requirement that operators must submit a written assessment of the effect of active and passive mitigation measures on their hazard analysis. PHMSA acknowledges that operators and hazard modeling practitioners are generally in the best position to identify precisely how a particular mitigation measure will affect the risk profile of an LNG facility. PHMSA will exercise continuing regulatory oversight in reviewing operator submissions.

Section 193.103(b)—Design Spill Criteria

PHMSA proposes to codify in § 193.103(b) the design spill criteria in LNG FAQ DS2 in lieu of the analogous criteria in Table 5.3.2.3 of NFPA 59A–2026. PHMSA's experience is that the undefined term ''single accidental leakage source'' (SALS) at Table 2.2.3.5 of NFPA 59A–2001 (for spills from process and transfer systems) has been a source of confusion. PHMSA, FERC, and NFPA have developed a series of clarifications characterizing (in some cases) worst-case, plausible spills from different types of transfer and process systems, including the design spill criteria in current LNG FAQs DS2(A) (hole size on process & transfer systems), DS2(B) (full-bore ruptures of single-ply construction expansion bellows), DS2(C) (hole size for pipe-in-pipe systems), and DS2(D) (hole size for truck transfer hoses). Each of these assumptions has been employed in subpart B siting analyses for multiple LNG facilities in the last decade.

First, LNG FAQ DS2(A) provides that a design spill should assume full-bore (or guillotine break) ruptures on transfer and process piping with a diameter less than six inches (*i.e.,* assuming a hole equal to the diameter of the pipe), while operators need only assume a two-inch hole on piping of six inches in diameter and larger. This line-drawing is based on identifying the largest plausible failures on such piping, since historical failure data demonstrates that full-bore ruptures are plausible failure modes on smaller piping, but not on large piping—failures of two inches or smaller hole size represent most of all failure data on piping of six inches or larger. PHMSA acknowledges that NFPA 59A–2026 (at section 5.3.2.3, referencing Table 5.3.2.3) employs different assumptions requiring full-bore ruptures only for piping smaller than three inches in diameter. Having objected to that provision during the standards development process as inconsistent with the results of PHMSA research,[111] PHMSA proposes to adopt the criteria in LNG FAQ DS2(A) instead of the provisions in Table 5.2.3.2 of NFPA 59A–2026.

Second, NFPA 59A–2001 does not include provisions for cryogenic PIP technology, and more recent editions of NFPA 59A exempt PIP transfer systems from the design spill requirements in favor of using (in Table 6.3.1) setback distances. PHMSA recommends in its LNG FAQ DS2(C) that operators evaluate design spills from a one-inch hole on all PIP transfer systems, regardless of diameter. That design spill parameter reflects PHMSA's understanding that, while unlikely, releases from PIP transfer systems are nevertheless possible—as evinced by the failure of such a system in the 2022 Freeport incident. PHMSA therefore proposes to codify its one-inch hole design spill requirement for PIP transfer systems within the new § 193.103(b).[112]

Third, for single-ply construction expansion bellows and truck transfer hoses, PHMSA proposes to codify at the new § 193.103(b) current guidance in LNG FAQ DS2(B) and (C). That guidance requires modeling of a hole size equivalent to a full-bore rupture for all single-ply construction expansion bellows and truck transfer hoses, regardless of diameter. PHMSA understands these conservative assumptions are warranted as single-ply construction expansion bellows and truck transfer hoses are less robust components with a higher likelihood of full-bore ruptures than fixed piping of equivalent size. Moreover, a fatal incident in September 2023 in Toppenish, Washington, in which a full-bore rupture occurred after a transfer hose detached as a truck pulled away from an LNG facility during transfer operations, demonstrates the

scenarios as required by NFPA 59A–2026 section 5.3.2.13. PHMSA understands that the probability of BLEVEs at LNG facilities is typically low and would in any event be exemplary of cascading damage rather than an independent hazard; as such, the probability (and consequence magnitude) associated with BLEVEs would also be mitigated by the suite of part 193 defense-in-depth requirements. PHMSA also understands the more specific language in those NFPA 59A–2026 provisions must be understood against a rule of reason: operators' written siting evaluations could briefly and qualitatively reference information on the factors identified within other documentation supporting regulatory compliance or approvals for their facilities without having to include an exhaustive (quantitative or qualitative) evaluation of those or other factors within a siting analysis.

[110] PHMSA solicits stakeholder comment on whether existing hazard modeling focused on thermal radiation and flammable vapor cloud dispersion provides adequate protection of public safety such that its proposed expansion of modeling to account for new hazards as contemplated by NFPA 59A–2026 would be unnecessary. PHMSA also solicits comment on the appropriateness of the NFPA 59A–2026 endpoints for each of the hazards for which that standard requires modeling. Finally, PHMSA solicits stakeholder comment on whether and to what extent any new hazard modeling requirement should be limited based on the quantity or type of hazardous fluids other than LNG present at a particular facility.

[111] Gas Tech. Inst. (GTI), Contract No. DTPH56–15–T–00008, *Statistical Review and Gap Analysis of LNG Failure Rate Table* (Jan. 2017).

[112] PHMSA is not proposing codification of other prescriptive criteria in LNG FAQs DS2(C)(1)–(3) addressed in provisions of NFPA 59A–2026 setting forth design requirements for pipe-in-pipe systems.

importance of adopting this modeling requirement.[113]

Section 193.103(c)—Models for Calculating Source Terms and Hazard Footprints Reviewed Against PHMSA Reference Materials

PHMSA proposes to consolidate and to enhance within a new § 193.103(c) current guidance at LNG FAQs H6 and H7 for the modeling of release source terms (the characterization of immediate-post release parameters) and hazard footprints. Specifically, PHMSA proposes to require that operators perform source term calculation and hazard modeling pursuant to computer programs reviewed against PHMSA-approved MEPs and data sets (MVDs). PHMSA understands that evaluation of those computer models by a software developer or a facility operator (rather than PHMSA) against PHMSA-approved MEPs and MVDs will satisfy the comparable provisions in NFPA 59A–2026 at sections 5.3.2.6 and 5.3.2.7.

Subpart B initially required the use of certain specific models for calculating endpoints (and, by extension, hazard footprints) for thermal radiation and flammable vapor-gas hazards from LNG releases.[114] RSPA subsequently revised subpart B to allow approval of alternative hazard models,[115] and sections 193.2057(a) and 193.2059(a) provide criteria that inform such reviews. Subpart B does not prescribe an analogous process for reviewing and approving source term models.

To address that gap, PHMSA has provided guidance in the form of an Advisory Bulletin (ADB–10–07) and LNG FAQs (initially H5–H6) for model developers to use in seeking PHMSA approval of flammable vapor cloud dispersion models evaluated against MEPs and experimental data.[116] PHMSA declined in LNG FAQ H7 to prescribe particular software for calculating source terms for flammable vapor-gas dispersion hazards. PHMSA has continued to work with subject matter experts to develop MEPs and MVDs appropriate for use in reviewing and approving computer models for calculating source terms and hazard footprints with respect to each of the hazards identified in NFPA 59A–2026 section 5.3.2.1. PHMSA's website provides links to those MEPs and the MVD data sets against which the MEPs require models be validated.[117] PHMSA's website also lists the handful of alternative models approved for use in modeling flammable vapor-gas dispersion hazards—each of which were approved only after protracted delay.[118] To date, no one has sought PHMSA approval for software for calculating source terms or for use in modeling other hazards identified in section 5.3.2.1 of NFPA 59A–2026.

PHMSA proposes to establish a developer-and-operator-led review and approval process at § 193.103(c). Software developers will need to review source term and hazard modeling software against the PHMSA-approved MEPs and MVDs; however, such software will no longer require explicit PHMSA approval before use.[119] This approach will ensure the more efficient use of PHMSA's limited resources. PHMSA notes this concern about diversion of resources is particularly acute given this NPRM's proposed expansion of modeling requirements to hazards that had formerly only been addressed qualitatively.

PHMSA also expects that its proposed approach will encourage industry investment in more sophisticated source term and hazard models by eliminating the delays associated with the PHMSA review and approval process, which have served as a barrier to innovation and investment. PHMSA does not expect this approach to have an adverse effect on public safety. Each source term and hazard model would still need to be evaluated by operators against robust, PHMSA-approved, hazard-specific MEPs and comprehensive MVDs, and PHMSA—as well as other (Federal or State) regulators—will continue to have the ability to take appropriate action through the enforcement and oversight process to address any safety concerns.

Lastly, PHMSA acknowledges that pertinent language in NFPA 59A–2026 (at sections 5.3.2.6 and 5.3.2.7) and within the MEPs and MVDs reflect the existing § 190.9 approval process. Should this proposal be adopted, PHMSA will interpret those provisions of NFPA 59A–2026 and its MEPs and MVDs as if they memorialized this updated approach. In parallel, PHMSA will work with other stakeholders to ensure that each of NFPA 59A and its MEPs and MVDs are updated to conform with revised regulatory text.

Section 193.103(d)—Cloud Height for Vapor Dispersion Modeling

PHMSA proposes to retain, but to redesignate as a new § 193.103(d), language at existing § 193.2059(b)(3) requiring that operators use an elevation parameter of 0.5 meters when modeling vapor dispersion hazard footprints. This requirement ensures that vapor dispersion modeling focuses on impacts at ground level where members of the public will be located. NFPA 59A–2026 chapter 5 does not address this modeling consideration. Accordingly, PHMSA proposes to maintain the existing requirement.

Section 193.103(e)—Modeling Duration for Vapor Dispersion

PHMSA proposes to adopt within a new § 193.103(e) the duration assumptions for modeling flammable vapor cloud dispersion hazards in LNG FAQ DS8(B). Pursuant to section 5.3.2.4 of NFPA 59A–2026, design spill duration can be capped at 10 minutes—and potentially less when an LNG facility is equipped with automatic shutdown systems—consistent with an expectation that vapor clouds will typically reach a maximum extent well before 10 minutes following initiation of a spill. But vapor clouds may continue expanding after the 10-minute spill duration ends in certain scenarios (*e.g.,* spills from long and large-bore piping with widely spaced isolation valves, or from process and storage vessels). Therefore, PHMSA proposes to qualify incorporation by reference of NFPA 59A–2026 section 5.3.2.4 to require operators continue flammable and toxic vapor dispersion simulation modeling until the vapor cloud reaches its maximum extent—even if that is longer than the design spill duration.

[113] *Wash. Utils. & Transp. Comm'n* v. *Cascade Nat. Gas Co.,* Docket No. PG–230800, *Compl.,* at ¶ 16 (Mar. 27, 2025).

[114] MTB, *Liquefied Natural Gas Facilities: New Federal Safety Standards,* 45 FR 9184 (Feb. 11, 1980) (codifying §§ 193.2057(c) (thermal exclusion zones) and 193.2059(c) (flammable vapor-gas exclusion zones)).

[115] *See* RSPA, *Incorporation of NFPA 59A in the Liquefied Natural Gas Regulations,* 65 FR 10950 (Mar. 1, 2000).

[116] *See* PHMSA, ADB–10–07, *Obtaining Approval for Alternative Vapor-Gas Dispersion Models,* 75 FR 33771 (Aug. 31, 2010); LNG FAQs, H5–H6 (Dec. 7, 2015). ADB–10–07 was itself the result of extensive work effort by PHMSA and subject matter experts within the Federal Government and industry on developing robust MEPs and MVDs.

[117] *https://www.phmsa.dot.gov/pipeline/liquified-natural-gas/lng-exclusion-zones.*

[118] PHMSA review of each of the three alternative models listed on its web page lasted a year or longer—with one (Phast 8.4) review lasting nearly three years.

[119] In the interests of regulatory certainty, PHMSA does not propose that § 193.103(c) would be construed either (1) to require operators to re-validate their computer models should the MEP or MVD for a particular hazard be updated during regulatory review (either in preliminary or final design phases) or subsequent construction and pre-operational phases of a project; or (2) to prohibit operators from validating their computer models against older versions of PHMSA-approved MEPs or MVDs unless PHMSA explicitly prohibits the use of older versions of the MEPs or MVDs when approving updated versions of the same. Should the continued use of a historical MEP or MVD entail unacceptable safety risk, PHMSA (or another cognizant regulatory authority) may exercise its statutory authority to restrict the use of that particular MEP or MVD either generically or in connection with a specific LNG facility project.

Notwithstanding this regulatory language, PHMSA expects operators may continue to use a 10-minute modeling cut-off time as a placeholder during the preliminary design phase, since the final modeling will depend on factors that are determined later in the design process.

Section 193.103(f)—Uncertainty Factors for Hazard Modeling

Subpart B regulations do not prescribe a safety factor for use in modeling thermal radiation hazards. In contrast, subpart B regulations at § 193.2059(b)(1) require that operators incorporate a safety factor in calculating flammable vapor-gas dispersion footprints: operator modeling of flammable vapor-gas hazards must be based not on the LFL of methane (5.0 percent concentration in air), but half of that value—2.5 percent methane concentration in air (or a safety factor of ''2''). The LFL safety factor of 2 was consistent with then-current edition of NFPA 59A when adopted in 1980 and addressed historical concerns with the limitations of contemporaneous modeling approaches.[120] But subsequent NFPA 59A editions no longer incorporate a specific, universally-applicable safety factor,[121] and the PHMSA-approved MEPs contain a methodology for calculating model-specific uncertainty factors based on evaluation of a model results against experimental data within PHMSA-approved MVDs—an approach consistent with NFPA 59A–2026 section 5.3.2.12.

PHMSA proposes to adopt at a new § 193.103(f) a requirement to use uncertainty factors derived from application of PHMSA-approved MEPs and MVDs. That approach is consistent with the comparable provisions in NFPA 59A–2026. PHMSA expects that the robust, hazard-specific evaluation processes and data sets for calculation of uncertainty factors will ensure adequate conservatism in the calculation of hazard endpoints. PHMSA also expects that software developers will have a commercial incentive to improve the accuracy of their computer models to capture increasingly lower uncertainty factors after evaluation against PHMSA-approved MEPs and MVDs.

Section 193.103(g)—Consideration of Active Mitigation Measures in Hazard Modeling

PHMSA proposes a new § 193.103(g) adopting the approach in section 5.3.2.2.1 of NFPA 59A–2026 for adjusting calculated hazard endpoints to reflect the installation of active mitigation measures. PHMSA has historically allowed operators to adjust modeled hazard endpoints to reflect certain passive design features (*e.g.,* vapor fences). But PHMSA has been reluctant to allow an adjustment for active mitigation measures, an issue not addressed in NFPA 59A–2001.[122] Subsequent editions of NFPA 59A (including NFPA 59A–2026) permit operators to take credit for active mitigation measures in calculating hazard footprints.

PHMSA therefore proposes within a new § 193.103(g) a process for considering active mitigation measures in calculating hazard footprints. This updated approach should align calculated hazard footprints more appropriately with genuine risks and incentivize operators to deploy novel, robust mitigation measures enhancing safety—a particularly valuable result given that PHMSA is elsewhere proposing to expand its hazard modeling requirements to address new hazards (*e.g.,* toxic vapor dispersion) that may warrant different mitigation strategies.

PHMSA has drafted § 193.103(g) to ensure that consideration of active mitigation measures in hazard modeling will be based on a sound, proven basis consistent with evolution of industry best practices and lessons learned. Specifically, the proposal would require each active mitigation measure to be incorporated into the documentation submitted to PHMSA in the § 193.103(a) siting package. Adequate supporting documentation could consist of test or experimental results, reference to the use of the same or a similar active mitigation measure at another LNG facility, or a special permit issued either for that or another facility.[123] Although this may place a burden on first adopters of active mitigation measures, PHMSA expects that burden to be reduced for subsequent users of the same measures, because PHMSA will have already considered whether and how an active mitigation measure should be accounted for in hazard modeling. Adequate supporting documentation could also reference any active mitigation measures accounted for in calculating exclusion zones for approved LNG facilities pursuant to the alternative QRA-based approach in proposed § 193.107. PHMSA expects that this requirement will ensure that use of active mitigation techniques within § 193.103 hazard modeling will be supported by robust quantification of the safety value of such measures that have been endorsed by a cognizant regulatory authority.

Lastly, PHMSA will (as discussed above) defer to an operator's assessment of precisely how an active mitigation measure would affect the performance (or output) of its hazard modeling, provided such assessment is documented in the siting package as contemplated by § 193.103(a). Operators—and not PHMSA—are generally best-positioned to evaluate the facility-specific factors (including, but not limited to, the characteristics of the hazard and the technical/operational practicability and cost of mitigation measures) demonstrating the value of particular mitigation measures.

c. Rescission of LNG FAQs and Miscellaneous Clarifications of NFPA 59A–2026 Hazard Modeling Boundaries

PHMSA proposes to rescind its LNG FAQs if the proposals in this NPRM are adopted in a final rule. Some of those LNG FAQs (in particular, those discussed above) will be redundant with, or superseded by, changes in the hazard modeling methods provided for in the revised subpart B. Other LNG FAQs prescribe a one-size-fits-all (and, in some cases, worst-case) approach on the choice of hazard evaluation parameters that may not resemble plausible release scenarios for particular facilities or hazards.[124] In lieu of following those parameters, operators should adhere to provisions in NFPA 59A–2026; for other parameters on which NFPA 59A–2026 is silent or explicitly allows flexibility, operators should use sound engineering judgment in selecting plausible, conservative parameters and document their reasoning as required by proposed

[120] *See* MTB, *Liquefied Natural Gas Facilities: New Federal Safety Standards,* 45 FR 9184, 9185 (Feb. 11, 1980).

[121] *See, e.g.,* RSPA, *Incorporation of NFPA 59A in the Liquefied Natural Gas* Regulations, 65 FR 10950, 10953 (Mar. 1, 2000).

[122] *See* LNG FAQ, H8. PHMSA acknowledges that some ''active'' mitigation measures may involve both procedural elements requiring human intervention as well as design (passive) elements.

[123] PHMSA will also consider stakeholder input on whether it should accept active mitigation measures for releases of certain (specifically, toxic chemicals appearing in an LNG facility) hazardous fluids incorporated into offsite consequence analyses supporting EPA-approved risk management plans pursuant to 49 CFR part 68.

[124] Among those LNG FAQs are those demanding the use of high-consequence assumptions regarding hole size (DS4), release height and location (DS5), release location (DS6), process conditions (DS7), system inventory (DS8), and pump configuration and operation (DS10–11).

§ 193.103(a) and NFPA 59A–2026 section 5.2.2.

PHMSA discusses below two issues regarding the scope of subpart B hazard modeling analyses that merit additional clarification.

Exemption of Feed Gas and Send-Out Gas Lines From Subpart B Hazard Modeling

LNG facilities are typically connected to pipelines that either supply gas for liquefaction (called ''feed gas'' lines) or receive gas after regasification (called ''send out'' lines). These pipelines are collectively referred to as ''supply lines'' and have historically been considered subject to PHMSA's part 192 requirements rather than its part 193 regulations (and by extension, NFPA 59A). Although neither NFPA 59A–2001 nor current subpart B regulations address the boundary between these regulatory regimes, PHMSA's practice has been to give operators discretion in designating the precise boundary—the ''spec break''—where each of the part 192 and 193 regulatory regimes would begin to apply. Operators in practice have typically chosen the first aboveground segment of a supply line within the LNG facility boundary as the ''spec break'' marking the boundary of part 193 regulations. This approach is consistent with the practical realities that most modeled hazards are pertinent to aboveground (rather than buried) piping and that operators are unlikely to have legal control of areas outside the property lines of their facilities as may be required if they were to draw exclusion zones as supply piping crossed into their facility.

Consistent with that historical practice, NFPA 59A–2026 at section 5.3.2.1 (as well as section 1.1.2(6)) now explicitly excludes ''feed gas and send out gas lines'' from hazard modeling requirements—but remains silent regarding the meaning of those terms. PHMSA proposes to continue its current policy of deferring to operators in determining the precise boundary between part 193-regulated piping (which would be subject to subpart B hazard modeling requirements) and part 192-regulated as supply lines (which would not be subject to subpart B hazard modeling requirements). This approach ensures continuity with PHMSA's historical approach, which has proven effective in ensuring public safety. Because PHMSA is merely affirming its longstanding approach on this issue, PHMSA does not propose regulatory text memorializing that understanding.

d. Sections 193.5 and 193.105—Retention of Exclusion Zone Framework and Extension to Newly Modeled Hazards

PHMSA proposes in redesignated and revised §§ 193.5 and 193.105 to apply the subpart B ''exclusion zone'' framework to additional hazards. Consistent with the current definition of ''exclusion zone'' at § 193.2007, an operator or a governmental authority would be required by the redesignated § 193.5 to have legal control for the life of an LNG facility over activities within certain modeled hazards' footprints—not merely at initial siting as contemplated by the letter of NFPA 59A–2026. PHMSA also proposes to codify at § 193.105(b) longstanding and common-sense guidance providing certain exceptions to the § 193.5 requirement that an operator or a governmental authority maintain legal control over all activities within certain hazard footprints. Specifically, LNG FAQ H5 recognizes exceptions to the default legal control requirement—for exclusion zones that would otherwise extend past a property line onto a public road or a navigable waterway—as a concession to the practical reality that legal control may not be possible in some cases and may not meaningfully contribute to safety given that those areas are not typically locations of prolonged activity by individuals.

In addition, PHMSA proposes a new § 193.105 that would reference NFPA 59A–2026 provisions providing for exclusion zones based on the modeled thermal radiation and flammable vapor dispersion hazard footprints, similar to current regulations at §§ 193.2057 and 193.2059. PHMSA also proposes that § 193.105 would extend PHMSA's traditional exclusion zone framework to the newly modeled hazards discussed above. This proposed expansion will ensure LNG facilities are sited in a manner minimizing risk to nearby commercial, residential, or sensitive establishments.

PHMSA proposes in § 193.105(a) to limit extension of its exclusion zone approach to some hazard endpoints that are newly modeled and that correlate to the most compelling risks of fatality or irreversible harm. Other, less consequential hazard endpoints will be subject to the occupancy and other restrictions set forth in tables (Tables 5.2.9, 5.2.10, and 5.2.11) in NFPA 59A–2026. For toxic vapor dispersion, exclusion zones and occupancy restrictions will (consistent with the approach taken in the quantitative risk assessment siting framework at NFPA 59A–2026 Table 19.8.4.1.1) be based on exposure times of one hour or less for each of AEGL–2 and AEGL–3. Longer exposure times for AEGL–2 and AEGL–3, as well as all AEGL–1 exposure times, would require development of public notification procedures in consultation with applicable State and local emergency response organizations that are consistent with LNG facility emergency response plans.

Extension of the exclusion zone approach to lower consequence (or, for AEGL–2 and AEGL–3, duration-determined) endpoints as contemplated by NFPA 59A–2026 could provide additional safety margin; however, PHMSA expects any incremental benefits would not outweigh the potentially significant additional compliance costs for several reasons. First, the particular public safety risks at issue are either less severe or more contingent (*e.g.,* for AEGL–2 and AEGL–3, time intervals allowing for public notification and evacuation/sheltering) than the acute fatality and irreversible harm risks associated with endpoints to which PHMSA proposes extension of its exclusion zone framework. Second, the incremental safety benefit from broader application of exclusion zones would likely be mitigated by the universe of other elements (*e.g.,* exclusion zones for other hazards; design, construction, O&M requirements) providing defense-in-depth from public safety risks. Third, should the characteristics of any particular LNG facility warrant broader exclusion zones, other regulatory authorities (*e.g.,* FERC within certificate conditions) may apply such requirements on an as-needed basis.

PHMSA has not compared the differences between the size of the exclusion zones that would be produced under the current regulations at §§ 193.2057 and 193.2059 and changes proposed in the NPRM. PHMSA expects that some of the changes (*e.g.,* codification of conservative FAQ design spill assumptions) may increase the size of exclusion zones for currently modeled hazards, while others (*e.g.,* consideration of active mitigation measures) may reduce them. The cumulative effect of any such changes will turn on the unique characteristics of each LNG facility and the results of computer models for source term and hazard footprint calculation that PHMSA has not yet reviewed.

PHMSA also understands that a before-and-after comparison would provide a poor measure of the safety impact of the proposed amendments; as discussed above, exclusion zones are a single, conservative element within a multi-layer defense-in-depth strategy for addressing public safety risks. PHMSA

subject matter experts expect that largest exclusion zones calculated pursuant to the default, prescriptive subpart B approach proposed in §§ 193.103 and 193.105 could be comparable in size to those calculated under current regulations. Moreover, PHMSA's proposed changes to hazard modeling and exclusion zones would provide a more accurate evaluation of public safety risks than current regulations, as PHMSA's proposals would require operators to model and to develop exclusion zones for additional hazards using more realistic assumptions.

C.3. Risk-Based Siting Alternative Using Quantitative Risk Analysis (NFPA 59A–2026, Chapter 19)

PHMSA proposes to retain a set of default, prescriptive siting requirements for all PHMSA-regulated LNG facilities at § 193.103. For operators willing to invest more resources, PHMSA also proposes at § 193.107 to adopt an alternative, QRA-based siting approach consistent with the provisions in NFPA 59A–2026 chapter 19.

As explained in more detail below, the QRA-based approach leverages decades of industry experience to provide a modern, comprehensive siting framework for LNG facilities. It also complements PHMSA's extensive experience administering risk-based regulatory frameworks for other pipeline facilities, including through gas transmission integrity management (part 192, subpart O), gas distribution integrity management (part 192, subpart P), and hazardous liquid pipeline integrity management (§ 195.452) programs. As discussed further in section IV.G, those risk-based regulatory regimes have resulted in improved safety outcomes since their adoption. And chapter 19 itself is the product of 15 years of effort to establish and refine a QRA-based alternative to historical, prescriptive siting requirements elsewhere within NFPA 59A, with the first attempt at a QRA-based siting alternative included within an optional Annex E to the 2009 edition of NFPA 59A.

The table below summarizes anticipated benefits of PHMSA's proposed QRA-based siting approach compared to the default, prescriptive siting requirements at § 193.103:

§ 193.103—Default, prescriptive siting approach (NFPA 59A–2026, ch. 5)	§ 193.107—QRA-based siting approach (NFPA 59A–2026, ch. 19)
Primarily qualitative consideration of probability employing conservative, simplified assumptions (*e.g.,* homogenous risk with a hazard footprint) when evaluating siting risks.	Explicit quantification of probabilities (*e.g.,* component failure, release parameters) when evaluating siting risks.
Rigid exclusion zones that constrain spacing of key equipment and systems within the facility—thereby limiting expanded capacity.	Enhanced flexibility to adjust dimensions of exclusion zones by adopting active and passive mitigation measures—thereby facilitating expanded capacity.
Obscures policy judgments regarding acceptable levels of siting risks and trade-offs between mitigation measures addressing those risks.	Identifies consensus, quantified values for acceptable siting risks with respect to both society and individuals.
Potentially challenging to account for the effects of active/passive mitigation measures on siting risks other than passive spill containment and active emergency shutdown measures.	Accommodates evaluation of active/passive mitigation measures on siting risks.
Diverges from international practice in evaluating siting risks for LNG facilities.	Aligns PHMSA risk evaluation practices with those of commercial entities, other international LNG facility regulators, and other Federal regulators of industrial facilities.

PHMSA also proposes exceptions and additions to the QRA-based siting requirements in NFPA 59A–2026 chapter 19 to ensure appropriate implementation and consistency with other part 193 requirements.

C.4. Section 193.107—Proposed Chapter 19 QRA Alternative and Comparison to Chapter 5 Prescriptive Siting Requirements

PHMSA proposes at a new § 193.107 to incorporate by reference the QRA-based siting approach in NFPA 59A–2026 chapter 19. Operators may use the QRA-based siting approach as an alternative to the traditional, prescriptive siting approach in the current subpart B requirements and the proposed § 193.103 (incorporating NFPA 59A–2026 chapter 5). PHMSA expects the QRA-based approach will offer several advantages compared to the traditional siting approach.

First, the QRA-based approach will enhance operator risk assessment comprehensiveness and precision. Although chapters 5 and 19 both require operators to evaluate certain plausible releases in performing a siting analysis, chapter 19 goes further. The QRA-based approach requires operators to consider more release scenarios and integrates explicit quantification of release scenario and parameter probabilities. And rather than simply employing successive layers of conservatism, chapter 19 ensures safety through a more sophisticated approach: modeling for additional hazards and more fulsome integration of probability in quantifying risks of those hazards. Chapter 19's QRA-based approach can also enable advanced modeling techniques—including probit functions [125]—not contemplated in chapter 5's siting regime.

Second, chapter 19's QRA-based approach will allow policymakers to make more informed decisions about individual LNG projects. The layers of additional conservatism embedded in the traditional siting approach are not easily deconstructed and employ opaque policy judgements regarding risk acceptability that tend to obscure the real-world risks that might result from having an LNG facility at a particular location. The QRA-based siting approach is far more transparent; it quantifies potential harm to individuals and society in a manner explicitly accounting for probability. The QRA-based approach also compares quantified risk values for individual and societal harms against explicit, consensus-derived risk tolerance levels. The QRA-based approach more easily accommodates sensitivity analyses as well, which is helpful in identifying the trade-offs available among the various mitigation measures.[126]

Third, the QRA-based approach will reinforce the various safety-enhancing

[125] Probit functions quantify factors (*e.g.,* the number of persons exposed, the amount of exposure persons received) to represent the real-world range of risk of fatality or irreversible harm to different individuals, instead of simply using fixed thresholds.

[126] *See, e.g.,* GTI, *Consistency Review of Methodologies for Quantitative Risk Assessment* (Oct. 26, 2020) (GTI 2020 Report) (evaluating 17 different sensitivity cases that varied modeling assumptions and other inputs into the QRA analyses for a hypothetical representative LNG export terminal and LNG peak-shaving facility).

proposals (*e.g.,* related to design, operation, maintenance, etc.) included elsewhere in this NPRM, primarily by improving resource allocation and incentivizing new practices and technologies to reduce risks to acceptable levels. The QRA-based approach should help emergency responders in the surrounding community apply limited resources more effectively, focusing on drills and training for particularly high-consequence or high-probability risks. The QRA-based approach elevates the importance of operator mitigation measures by introducing explicit mechanisms for managing estimated individual and societal risks through the implementation of those measures. This enhanced approach can ensure operators direct finite personnel and capital resources toward the highest-risk components and processes.

Fourth, the QRA-based siting approach can enable greater flexibility for operators in selecting the site and internal layout of LNG facilities. As discussed at greater length in section 3.3.1 of the PRIA, the prescriptive approach in NFPA 59A–2026 chapter 5 can constrain the location of LNG facilities. The conservatism embedded in the prescriptive approach requires operators to acquire more land than is necessary from a risk perspective to construct or to expand an LNG facility, or to make adjustments in locating components and equipment within the boundaries of an LNG facility to avoid acquiring more land. Requirements at chapter 6 (plant layout) and elsewhere in NFPA 59A–2026 compound those constraints by prescribing minimum distances for placement of components that may be tied to facility boundaries or the location of other key equipment.[127] PHMSA expects that the hazard footprints drawn pursuant to the QRA-based approach will more closely track actual risk than exclusion zones drawn pursuant to the prescriptive approach, and that operators will have more flexibility in selecting potential sites for new LNG facilities and maximizing the use of the land available at existing LNG facilities.

Fifth, the QRA-based approach will improve alignment of part 193 siting requirements with global practices. Regulatory agencies worldwide already use QRA for siting hazardous material facilities, including LNG facilities; PHMSA-commissioned studies have found that the most well-developed regulatory regimes employ methodologies largely consistent with NFPA 59A–2026 chapter 19.[128] And other Federal regulators employ chapter 19 and other QRA tools in evaluating the risks of high-consequence materials and industrial facilities within their jurisdictions.[129] PHMSA is also aware of widespread commercial use of QRAs in connection with industrial facilities, as U.S. insurance companies widely adopted QRA in site-specific catastrophe modeling over 20 years ago, and operators of U.S. chemical, manufacturing, and oil and gas facilities now regularly use QRA techniques to improve their risk assessments.[130] Aligning PHMSA's siting regime with these examples will support future refinement of part 193 by facilitating comparison with similar facilities in other industries and jurisdictions.

PHMSA is not proposing to require advance notification or approval of an operator's decision to use the alternative QRA-based siting framework. Nor is PHMSA proposing to incorporate the prohibition in section 19.1.3 on combining the requirements within chapters 5 and 19. Rather, PHMSA proposes that operators opting for a QRA-based siting approach would, pursuant to proposed § 193.101, remain subject to requirements at sections 5.2.1 (written evaluation) and 5.3.1 (impoundment areas).

PHMSA also does not propose adopting the requirement at section 19.2.4 requiring periodic (five-year) re-assessments of QRA analyses. PHMSA does not believe that such re-assessments are necessary given the reevaluation requirement for significant facility modifications in NFPA 59A–2026 section 19.1.4.[131] PHMSA also qualifies the direction at NFPA 59A–2026 section 19.1.5 requiring application of a QRA-based alternative to the entirety of a LNG plant; PHMSA proposes that a QRA would only apply to LNG facilities that are new, replaced, relocated or significantly altered, rather than the entirety of an LNG plant (which may comprise several LNG facilities). Lastly, PHMSA proposes a new § 193.107(a) providing that operators must submit to PHMSA documentation material to its evaluation of compliance with § 193.107 requirements governing use of the QRA-based alternative siting framework. PHMSA notes that that such material will often include much of the same material that an operator employing the default, prescriptive approach to siting would need to submit in complying with proposed § 193.103(a); however, each of NFPA 59A–2026 section 19.2.1 and its accompanying NFPA 59A–2026 appendix guidance identifies additional documentation that would need to be submitted.

c. Mechanics of Chapter 19 QRA-Based Approach and Proposed PHMSA Enhancements

PHMSA discusses below the core elements of NFPA 59A–2026's chapter 19 QRA-based siting approach proposed for incorporation by reference into subpart B, as well as pertinent exceptions or additions that PHMSA is proposing to facilitate implementation and improve consistency with other part 193 requirements. PHMSA notes that operators may look to the explanatory guidance in Appendix A to NFPA 59A–2026 for assistance in implementation mechanics for the QRA-based alternative.

System Description & Release Scenario Identification

The first step in performing a siting analysis under chapters 5 and 19 is developing a system description and specifying the LNG and other hazardous material release scenarios to be modeled. Both approaches require operators to identify and evaluate siting-related, facility-specific information regarding layout, equipment, adjacent activities and hazards, and environmental conditions.

But the scope of release scenarios considered under the two approaches diverges thereafter. First, chapter 19 builds on the generic evaluation requirement at section 5.2.1 by requiring at section 19.5.1 that operators collect a ''comprehensive'' set of information regarding release scenarios for LNG and other hazardous materials. Chapter 19 also contemplates that the release scenarios considered explicitly account for quantified probabilities of a number of factors (including annual frequency of releases from different types of equipment; conditional probabilities

[127] *See, e.g.,* NFPA 59A–2026 at sections 6.3.1 (minimum separation distances in Table 6.3.1 between LNG containers and tanks containing flammable refrigerants), 6.3.5 (prohibiting ignitable fluid containers in LNG tank impoundments), 6.4 (separation distances for vaporizers), 6.5 (process equipment separation distances), 6.7 (building separation distances), and 6.8 (impoundment location and separation distances).

[128] *See* GTI 2020 Report, at xv, 3 (noting ''good agreement'' between the chapter 19's content and the overall methodology, failure modes, failure rates, location-specific individual risk criteria for fatality set forth in the LNG regulatory regimes for the United Kingdom, Netherlands, and Singapore).

[129] For example, USCG regulations at 33 CFR 127.008(d) allow use of chapter 19's QRA-based framework as an alternative to WSAs for waterfront LNG fuel facilities.

[130] *See generally* Patricia Grossi & Howard Kunreuther, *Catastrophe Modeling: A New Approach to Managing Risk* (2005).

[131] PHMSA notes that requiring periodic re-assessment of LNG facility siting could violate the non-retroactivity prohibition at 49 U.S.C. 60103(c)(1).

associated with environmental conditions and release parameters) affecting the consequence magnitude and frequency of releases.

Second, chapter 5 (at section 5.3.2) directs operators to establish, based on the information identified pursuant to section 5.2.1, a limited set of sufficiently plausible, (sometimes) worst-case release parameters (''design spills'') and release behavior (''source terms'') that must be evaluated by computer modeling. Release scenarios judged implausible need not be comprehensively analyzed. In contrast, section 19.5.1 requires operators to use a process hazard analysis to generate a more comprehensive, facility-specific list of possible hazard scenarios (of which ''design spills'' under chapter 5 could be a subset) and to evaluate various combinations of release conditions (*e.g.,* stream pressure and temperature, physical state, hole size, location, duration) for each scenario. This approach avoids a limitation of the prescriptive approach in chapter 5, which requires operators to evaluate each hazard in isolation and to distil artificially the risks associated with a complex system of an LNG facility and its surrounding environment into a limited set of release parameters yielding a single metric (the hazard endpoint distance). In contrast, the QRA-based approach leverages the latest understanding of (sometimes interrelated) failure modes and equipment failure rates in examining more potential release scenarios and quantifies the likelihood and consequences resulting from each release. The result is a comprehensive and nuanced view of the risks specific to each LNG facility.

PHMSA expects that a process hazard analysis performed pursuant to section 5.2.1(1) of NFPA 59A–2026, or in connection with the risk-based inspection and maintenance alternative framework (discussed in section IV.G), may satisfy the PHA requirement at section 19.5.1.2 if the analysis is reasonably ''comprehensive'' and otherwise complies with the requirements of sections 19.5.1 and 19.5.2.

Hazard Modeling

Chapters 5 and 19 both require operators to use computer models to calculate ''hazard footprints'' for LNG facilities. The hazard footprints depict the areas where individuals may be at risk of fatality or irreversible harm should certain hazard phenomena occur (*e.g.,* jet fires, pool fires, flammable gas/vapor dispersion, etc.). The computer models use threshold values denoting individual risk for hazard phenomena that are largely similar; exposure or concentration levels below these thresholds are not modeled under either approach.[132] Both approaches require operators to assess the contingency of ''cascading damages'' where primary release scenarios cause secondary releases. Both approaches contemplate that hazard modeling can account for operator mitigation measures.

But chapter 19 requires more comprehensive and sophisticated hazard modeling than chapter 5. Section 19.8 requires operators to consider additional phenomena (pressure vessel bursts, BLEVEs, and oxygen-displacing gas dispersion) not required under chapter 5 in modeling hazard footprints.[133] Chapter 19 incorporates quantified probability values for factors informing risk when calculating hazard endpoints. The probability values pertain not only to release frequency and parameters but may also incorporate probit functions. Chapter 5 uses a far less precise approach: conservative assumptions (*e.g.,* ''design spills,'' source terms, and high rates of harm from exposure within hazard thresholds) are used in hazard modeling in which consideration of probability is embedded but not explicitly quantified.

PHMSA acknowledges the resources supporting QRA-based hazard modeling under chapter 19 are not as mature as those available for hazard modeling under chapter 5. For example, PHMSA-approved MEPs and MVDs are not available for every hazard that must be modeled under chapter 19 (consistent with § 193.103(c) proposed above). PHMSA proposes at § 193.107(c) that operators use computer models for models that have been reviewed against PHMSA-approved MEPs and MVDs where available; for other hazards, operators should employ sound engineering judgment (and document their reasoning consistent with § 193.107(a)) in selecting and using appropriate modeling software and validation data. Operators would be required to validate hazard models against any MEPs and MVDs that PHMSA subsequently approves. Operators using the chapter 19 QRA-based alternative would be required to employ sound engineering judgment (and document their reasoning within materials submitted pursuant to § 193.107(a)) in selecting probit functions in modeling hazard endpoints; PHMSA will generally defer to an operator's choice of probit functions unless a compelling safety concern demands regulatory oversight intervention.[134]

PHMSA also acknowledges that the mechanics of performing hazard modeling in chapter 19 are not as detailed as those in the longstanding approach in chapter 5. PHMSA therefore proposes supplemental provisions to facilitate implementation of chapter 19. For example, consistent with the exclusion of ''feed and send-out lines'' from the hazard modeling requirements at NFPA 59A–2026 section 5.2.1, PHMSA proposes language at § 193.107(d) providing the same exception for hazard modeling and risk analysis under the QRA-based alternative. Lastly, similar to the approach taken in its proposal at § 193.103, PHMSA proposes in § 193.107(a) that operators must document the effect that any active or passive mitigation measures have in assessing their hazard modeling and risk analysis.

Risk Characterization, Evaluation and Tolerance

The QRA-based approach in chapter 19 characterizes, evaluates, and determines tolerable risk levels in a way that is far more sophisticated than the prescriptive approach in chapter 5. For its part, chapter 5 focuses on risk of fatality or irreversible harm to individuals on a hazard-by-hazard basis without estimating societal risk or aggregated risk to an individual at different locations from all modeled hazard phenomena. And, as explained above, the estimates of individual risk in chapter 5 account for probability implicitly within conservative assumptions and do not integrate quantified probabilities in risk calculations. Further, chapter 5 evaluates risks within a framework marked by bright-line simplicity: exclusion zones bounded by one-size-fits-all hazard endpoints prescribed within tables in that chapter determine whether risks to individuals are intolerable (inside the exclusion zone)

[132] As discussed further below, chapter 19 also permits use of probit functions in hazard modeling of harms to individuals and society rather than employing chapter 5's approach of assuming 100 percent probability of harm. Operators using probit functions could be said to consider hazard phenomena falling below hazard endpoints.

[133] Chapter 19 defers to the AHJ's judgment as to whether to require operators to model oxygen-displacing gas dispersion hazards; PHMSA proposes such modeling to reduce public safety risks associated that those hazards.

[134] Operators may consult the Dutch ''Green Book'' for guidelines on applying probit functions to calculate probabilities of fatality. *See* Comm. for the Prevention of Disasters Caused by Dangerous Substances, *CPR 16E, Methods for the Determination of Possible Damage* (1st ed. 1992), available at: *https://publications.tno.nl/publication/34634118/X2BfNj/TNO-1992-greenbook.pdf.*

or tolerable (outside the exclusion zone). Exclusion zones in turn define the outer boundaries of an LNG facility—and consequently the layout of buildings, equipment, and processes within its perimeter.

Chapter 19 uses a more nuanced and sophisticated approach. First, section 19.9.1 requires aggregation of each of the risks of fatality and irreversible harm to individuals across all modeled hazards. Operators calculate the estimated likelihood of fatality and irreversible harm from each hazard and then combine the risk from each to quantify the overall risk to an individual at each location within the LNG facility and surrounding area within the modeled hazard footprints (''location-specific individual risk,'' or ''IR'') in a manner which accounts for probabilities in a number of factors informing individual risk. Operators must present these IR values (which are expressed in terms of annual frequency) visually using topographic maps of constant individual risk (''isopleths'') throughout the LNG facility and surrounding area.[135]

Chapter 19 then requires characterization of the aggregated, facility-wide societal risks of fatality and irreparable harm by accounting for the population within each modeled hazard. Section 19.9.2 requires operators to estimate the number of people within the hazard footprints using public demographic or census data. The resulting ''number of affected persons'' for each hazardous consequence is used to aggregate each of fatality and irreparable harm risks; the resulting ''societal risks'' appear as a graph of the likelihood of each of fatality and irreparable harm risks against the number of affected people for each hazard (''F–N curves'').

Second, chapter 19 at sections 19.10 and 19.11 sets explicit thresholds for intolerable, mitigation-required, and tolerable individual and societal risks against which aggregated IR and societal risks calculated pursuant to section 19.9 are compared (typically in graph form). IR and societal risks falling in the ''zone'' above the ''intolerable'' threshold are unacceptable under any circumstances. Intolerable IR risks must be addressed through land use and occupancy restrictions similar to exclusion zones provided in chapter 5 or mitigation to reduce risk to tolerable levels as documented in a follow-on QRA. Intolerable societal risks must be addressed through mitigation by way of re-design of the LNG facility or significant mitigation actions and the QRA must be performed again. Societal risks falling in the ''zone'' between intolerable and tolerable risks—termed the ''as low as reasonably practicable (ALARP) region'' in sections 19.10 and 19.11—must be mitigated to the point at which an additional mitigation measure would become unreasonably disproportionate to the incremental risk reduction expected. And IR and societal risks falling in the ''zone'' below the threshold for tolerable risk would be acceptable without land use restrictions or other forms of mitigation.

Chapter 19 at section 19.10 sets the following thresholds for intolerable risks:

- The IR must be less than $5x10^{-5}$ annual risk of fatality ($5x10^{-4}$ annual risk of irreversible harm) for all land uses within the control of the operator or subject to an approved legal agreement to protect the general public, and the IR must be less than $3x10^{-7}$ annual risk of fatality ($3x10^{-6}$ annual risk of irreversible harm) for sensitive establishments located outside of land uses controlled by the operator or subject to an approved legal agreement to protect better those sensitive establishments similar to ''identified sites'' who would be difficult to evacuate in 49 CFR 192.903.[136]
- Societal risk cannot exceed $F*N = 10^{-3}$ (where F is the annual frequency and N is the number of fatalities) or $F*N = 10^{-2}$ (where F is the annual frequency and N is the incidence of irreversible harm), while societal risk below $F*N = 10^{-5}$ (annual risk of fatalities) or $F*N = 10^{-4}$ (annual risk of irreversible harm) are considered fully tolerable, with the ALARP region falling in between those levels.

The risk tolerance thresholds in chapter 19 align with widespread consensus regarding appropriate individual and societal risk thresholds for industrial activity. For example, the thresholds for tolerable individual fatality risks from LNG facilities are comparable to the annual risk of fatality members of the public experience using common modes of transportation.[137] Other U.S. and international regulatory authorities and leading international organizations have adopted comparable levels of tolerable individual risk of fatality for industrial activities.[138] Chapter 19 societal risk tolerance levels are also on par with consensus levels of societal risk tolerance in other jurisdictions and other Federal regulators of industrial activity.[139]

Risk Mitigation

The chapter 19 risk tolerance thresholds create an incentive for operators to develop innovative, and cost-effective, measures to reduce risks to acceptable levels to minimize land use restrictions. Altering the capacity or location of individual facility components and processes can alter the dimensions of isopleths mapping aggregated risks to individuals as well as the plotting of F–N curves depicting margins to intolerable societal risks. Alternatively, if commercial or other

[135] *See generally* GTI 2020 Report, at app. D (depicting IR isopleths and societal risk graphs).

[136] ''Sensitive establishments'' are institutional facilities that might be difficult to evacuate, including schools, daycare facilities, hospitals, nursing homes, jails, and prisons. Annual individual risks lower than $3x10^{-7}$ (or $3x10^{-6}$) are considered fully tolerable for all populations and create no siting restrictions.

[137] U.S. road travel presents a roughly $1.7x10^{-4}$ annual risk of fatality for a licensed driver. Federal Highway Administration, *Highway Statistics 2023,* § 12.2.1, available at: *https://www.fhwa.dot.gov/policyinformation/statistics/2023/.* U.S. pedestrians experience a roughly $2.33x10^{-5}$ annual fatality risk from vehicles on average, with that risk as high as $5x10^{-5}$ per resident in major U.S. metro areas. Centers for Disease Control and Prevention, *Pedestrian and Overall Road Traffic Crash Deaths—United States and 27 Other High-Income Countries, 2013–2022* (Mar. 2025); Smarter Growth America, *Dangerous by Design 2024* (May 2024). Meanwhile, the severity of transportation-related injuries can be difficult to quantify, and thus annual risks of ''irreversible harm'' can be difficult to compare across transportation modes. *See* Sigrun Malm *et al., Risk of Permanent Medical Impairment (RPMI) in Road Traffic Accidents,* 52 Ann. Adv. Auto. Med. 93, 93–100 (2008).

[138] For example, the Nuclear Regulatory Commission tolerates $1x10^{-7}$ annual risk of individual fatality from nuclear accidents, and each of the Environmental Protection Agency and the Food and Drug Association tolerate $1.4x10^{-8}$ annual risk of individual fatality from cancer in their regulation of jurisdictional substances. Though these tolerances are more stringent than NFPA 59A, the U.S. Government has historically been less tolerant of risks from cancer and nuclear accidents than from transportation. Australia and Singapore also tolerate $5x10^{-5}$ annual risk of individual fatalities from industrial facilities such as LNG facilities. The International Maritime Organization tolerates higher risks from vessels to members of the public ashore ($1x10^{-4}$ annual individual fatality risk). The most analogous may be U.S. DOT FAA Commercial Space Program's establishment of exclusion zones of the public in the vicinity of new launch locations in 14 CFR 420 based on a public risk criteria of $1x10^{-4}$. PHMSA notes, however, that few other regulators have adopted standards prescribing tolerable levels of irreversible or other non-fatal harms to individuals—a safety-enhancing innovation of NFPA 59A. *See* GTI 2020 Report, at 28.

[139] Like NFPA 59A, FERC's Risk Informed Decision Making Guidance governing dam safety also sets the intolerable societal risk level at $F*N = 1x10^{-3}$ and the fully tolerable societal risk level at $F*N = 1x10^{-5}$ for annual fatalities, with some exceptions. FERC, *Interim Risk Informed Decision Making Guidance,* at 3–12 to 3–14 (Mar. 2016). Belgium and Switzerland also consider a societal fatality risk level greater than a $F*N = 1x10^{-3}$ as intolerable for fixed industrial facilities such as LNG facilities. Switzerland, the United Kingdom, and Hong Kong also consider a societal fatality risk level of $F*N = 1x10^{-5}$ as fully tolerable for hazardous facilities and the transportation of dangerous goods (including LNG facilities).

considerations limit ability to adjust those variables, an operator can employ active and passive mitigation measures to compensate for the contribution to siting-based risks. For example, an operator may mitigate the risks from a hazard by introducing a vapor barrier to obstruct vapor dispersion or a thermal wall to reduce radiant heat exposure. An operator may also choose to decrease the expected duration of the release by introducing early detection and isolation equipment. Or an operator may adopt equipment and technologies with lower failure rates. Operators can use sensitivity analyses and Layer of Protection Analysis (LOPA) techniques to quantify the reduction in probability from adding a new layer of detection or protection against hazardous consequences.[140]

Consistent with the approach proposed for addressing active mitigation measures under § 193.103(g), PHMSA will generally defer to an operator's documented (pursuant to § 193.107(a)) selection of active or passive mitigation measures and assessment of the effect of those measures on facility individual and societal risk profiles. PHMSA expects that the enhanced procedural and documentation requirements of the QRA-based alternative will provide adequate assurance of the safety value of specific mitigation measures. PHMSA will extend that deferential approach in assessing whether an operator has mitigated societal risk to levels ''as low as reasonably practicable.'' Because the precise trade-offs between risk reduction and practicability concerns (including costs) of any particular mitigation will turn on a number of facility-specific factors (*e.g.,* the characteristics of the hazard and facility design/technical features and parameters) that operators will be best-positioned to evaluate, PHMSA will refrain from imposing universal requirements or thresholds for such mitigation. PHMSA (as well as other State and Federal regulators, as appropriate) will retain regulatory oversight to ensure the adequacy of mitigation measures taken by operators in response to their chapter 19 siting analyses and take necessary actions to protect public safety.

Lastly, PHMSA notes that its proposal to incorporate by reference the chapter 19 QRA-based approach includes the risk criteria and land use restrictions for tolerable individual risks of fatality and irreversible harm at section 19.10.1 (referencing Tables 19.10.1(a) and (b)). However, consistent with PHMSA's proposal at § 193.105(b) to exempt public roads, rights of way, and navigable waters from the exclusion zone requirements of chapter 5, PHMSA similarly proposes language at § 193.107(e) excluding public roads, rights of way, and navigable waters from the land use restrictions and occupancy restrictions of chapter 19.

C.5. Section 193.109—Minimum Separation Distance From Airport Runways

PHMSA will maintain, but redesignate at a new § 193.109, the existing minimum separation distance between LNG storage tanks and airport runways found at § 193.2155(b). NFPA 59A–2026 chapter 5 does not have a comparable limitation. PHMSA proposes to retain the existing requirement, albeit within subpart B as it is better understood as a siting requirement than a subpart C design requirement. PHMSA has also updated the reference to pertinent Federal Aviation Administration regulations.

C.6. Section 193.101(b)—Delayed Compliance Date

PHMSA proposes to adopt a delayed compliance date at § 193.101(b). Specifically, section 193.101(b) would limit the applicability of the updated subpart B siting requirements to LNG facilities that are designed, constructed, replaced, relocated, or significantly altered five years after the publication date of any forthcoming final rule in this rulemaking proceeding. This delayed compliance date will provide adequate time for development of new or updated hazard modeling computer programs and operator compliance and implementation strategies. PHMSA's proposed delayed compliance date would also give PHMSA the opportunity to work with stakeholders to identify the need for, and issue, any clarifying guidance, as well as to undertake any necessary interagency coordination efforts (including, but not limited to, negotiation of interagency agreements and memoranda of understanding).

Existing facilities, or any new facilities designed, constructed, replaced, relocated, or significantly altered before the delayed compliance date, would only need to comply with subpart B requirements as currently codified in subpart B.[141] For any operators willing to forgo the delayed compliance date, PHMSA would deem compliance with the subpart B amendments adopted in any forthcoming final rule as complying with the current subpart B requirements.[142]

D. Subpart C—Design, Construction, and Installation

PHMSA proposes to consolidate the current subparts C (design), D (construction), and E (equipment) within a new subpart C, entitled ''Design, Construction, and Installation.'' The new subpart C will consist largely of incorporation by reference of pertinent chapters of NFPA 59A–2026.

As discussed in section IV.A above, subparts C, D, and E currently incorporate by reference ''the requirements of NFPA 59A,'' subject to a regulatory conflict preemption provision. The extent to which the ''requirements of NFPA 59A'' are incorporated by reference into these subparts is unclear. The preambles of the NPRM and final rules adopting the current regulatory language do not address this question, and the distinctions between each of ''design,'' ''construction'' and ''equipment'' requirements often blur in practice. Moreover, part 193's current sorting of requirements among its subparts can be challenging for stakeholders to follow (*e.g.,* location of wind force design requirements at § 193.2067 within subpart B ''siting'' requirements).

Nor does the organization of 2001 and 2006 editions of NFPA 59A reflect distinctions PHMSA has drawn between the subject matters addressed by different part 193 subparts.[143] More

[140] FERC requires operators to describe all layers of protection in detail in its Resource Reports 11 and 13 when approving new or recommissioned LNG facilities. *See* Andrew Kohout, *U.S. Regulatory Framework and Guidance for Siting Liquefied Natural Gas Facilities—A Lifecycle Approach* (2012) (discussing 12 different categories of layers of protection that operators should describe). LOPA can provide specific criteria for evaluating each independent protection layer and determining the probability of failure. Operators can use the Safety Integrity Level benchmarking system to help identify which IPL changes can reduce the hazard to tolerable levels.

[141] PHMSA acknowledges that current requirements within subpart B apply to facilities designed, constructed, replaced, relocated, or significantly altered after March 31, 2000; facilities designed, constructed, replaced, relocated, or significantly altered before that date remain subject to earlier versions of part 193 siting requirements.

[142] PHMSA cautions, however, that operators will not be able to pick-and-choose among specific elements of then-codified subpart B and amended requirements adopted in a final rule in this proceeding; instead, they will need to comply with either the then-effective or amended subpart B requirements in their entirety.

[143] NFPA 59A–2001 and NFPA 59A–2006 both employ chapter headings very different from those for each of part 193, subparts C–E. In addition, the requirements in each chapter of those editions of NFPA 59A will typically encompass multiple topics (including design, construction, installation, and specific provisions tailored to different types of equipment in an LNG facility).

recent editions of NFPA 59A (including NFPA 59A–2026) have only exacerbated this problem. As both the universe of NFPA 59A requirements and the number of chapters in which those requirements are located have expanded, it has become increasingly difficult to distinguish which ''requirements of NFPA 59A'' correspond to each subpart of part 193—much less whether NFPA 59A requirements would ''conflict'' with part 193 regulatory text. These interpretive challenges are compounded by the NFPA 59A–2026's inclusion of O&M standards within chapters nominally dedicated to design, installation, and construction (and vice-versa).[144]

To address these concerns, PHMSA proposes to consolidate subparts C, D, and E within a new subpart C, entitled ''Design, Construction, and Installation.'' PHMSA also proposes that new subpart C will incorporate by reference the entirety of certain chapters of NFPA 59A–2026. The NFPA 59A–2026 chapters proposed for incorporation by reference into the new subpart C are listed in the table below.[145] That table also provides a non-exhaustive summary of elements within NFPA 59A–2006 that PHMSA expects would contribute to improve safety as compared to the historical editions of NFPA 59A currently referenced in subparts C, D, and E:

NFPA 59A–2026 chapter	Notable safety-enhancing elements
Chapter 4: General Requirements	• Introduces robust engineering control processes and recordkeeping requirements for component and equipment design, construction, installation, and testing that are consistent with proven approaches employed in connection with Safety Management Systems on pipelines (sections 4.6 and 4.9). • Employs the leading industry standard (NFPA 110) for design and installation of emergency and backup power systems on hazardous fluid systems (section 4.8.2). • Introduces new provisions defining non-flammable material consistent with leading NFPA consensus industry standards (section 4.10).
Chapter 5: Plant Siting (sections 5.2.3 and 5.2.4).	• Introduces design and installation (impounding areas, secondary containments, grading) requirements for each of all-weather accessibility (section 5.2.3); surface water draining (section 5.2.4).
Chapter 6: Plant Layout	• Introduces new provisions providing for layout considerations arising from expanding NFPA 59A requirements to additional LNG storage technologies (*e.g.,* ''membrane containment tanks'') (section 6.3.2). • Expands layout requirements to additional facilities (miscellaneous buildings at an LNG facility at section 6.7; impoundments at section 6.8) whose location could affect the hazard profile of the LNG facility in the event of a release of a hazardous fluid.
Chapter 7: Process Equipment	• Updates references to ASME BPVC and other standards to ensure that piping and other components at an LNG facility are consistent with recent consensus industry standards governing design, construction, installation, and initial testing of pressure vessels (sections 7.5 and 7.6).
Chapter 8: Stationary LNG Storage	• Incorporates by reference the latest versions of API standards 620 and 625 to ensure that LNG storage tanks are consistent with recent consensus industry standards governing design, construction, installation, and initial testing (section 8.2.1). • Incorporates by reference ACI 376 which governs the manufacture, installation, and initial testing of a critical material—concrete—used in managing the public safety risks associated with LNG storage tanks (section 8.2.1.3). • Imposes requirements to ensure the safe use of additional LNG storage container types, including ASME containers (section 8.2.2) and membrane tanks (various). • Introduces a requirement for LNG storage tanks to withstand flood and hurricane storm surges (section 8.3.2.1), tsunamis (section 8.4.14.1.3.1), and seismic events (section 8.4 and 8.5).
Chapter 9: Vaporization Facilities	• Introduces revisions to improve clarity and specificity of NFPA 59A requirements to assist LNG facility operators in understanding the application of NFPA 59A design, installation, construction, and initial testing requirements pertinent to vaporization facilities.
Chapter 10: Piping Systems and Components.	• Expands NFPA 59A requirements to all piping systems in hazardous fluid service—analogous sections of NFPA 59A–2001 were limited to piping in cryogenic service (section 10.2). • Introduces enhanced requirements for flammability resistance of piping insulation (section 10.3.1.4). • Introduces enhanced requirements specific to bends in piping in hazardous fluids service (section 10.3.3.3) and piping joints (section 10.4.1). • Introduces enhanced design requirements for blow-down and purge connections on process piping (section 10.9). • Introduces design, construction, installation, and initial testing requirements extending NFPA 59A protections to cryogenic PIP systems (section 10.13). • Introduces design, construction, installation, and initial testing requirements for subsea and below ground hazardous fluid piping (section 10.14).
Chapter 11: Instrumentation and Electrical Services.	• Introduces baseline design performance standard for function of control systems in LNG facilities (section 11.2). • Expands electrical classification area requirements (section 11.9.2). • Introduces requirements for specific plant configurations providing operators greater clarity regarding the application of NFPA 59A–2026 to various systems.

[144] By way of example, NFPA 59A–2026 locates cathodic protection design and installation requirements at section 18.11.13—within chapter 18 (Operating, Maintenance, and Personnel Training). However, throughout chapters dedicated to design and installation requirements, NFPA 59A–2026 includes periodic evaluation and maintenance requirements or broadly requires compliance with consensus industry standards that contain maintenance and operating requirements. *See, e.g.,* NFPA 59A–2026 section 10.12.1 (requiring underground and submerged piping be protected *and maintained* pursuant to NACE SP0169).

[145] PHMSA does not propose that § 193.201 would incorporate by reference design, installation, and construction provisions scattered throughout the chapters listed in this table. Rather, those provisions would be incorporated by reference pursuant to PHMSA's proposed § 193.401 governing operations and maintenance requirements. Should stakeholders identify standards meriting characterizing as design, installation, and construction requirements, they may identify those concerns in their comments on the NPRM, or (after issuance of a final rule) submit a request for interpretation pursuant to § 190.11(b).

NFPA 59A–2026 chapter	Notable safety-enhancing elements
Chapter 12: Plant Facilities Design	• Introduces more detailed requirements for design resistance of buildings/components at an LNG facility to natural phenomena (seismic, ice/flood, wind, etc.) consistent with recent versions of the leading industry standard ASCE 7.
Chapter 13: Impounding Area and Drainage System Design and Capacity.	• Enhances impoundment capacity requirements by employing more conservative assumptions for calculating the minimum capacity (sections 13.1 to 13.5). • Adapts NFPA 59A impoundment requirements to accommodate PIP systems (section 13.7).
Chapter 15: Transfer Systems for LNG and Other Hazardous Fluids.	• Introduces expanded detail to improve operator understanding of the application of NFPA 59A design, construction, installation, and testing requirements to LNG and hazardous fluid transfer systems outside of the marine cargo transfer area.
Chapter 16: Fire Protection, Safety, and Security (miscellaneous fire protection system design and installation requirements).	• Introduces detailed design and installation requirements for emergency shutdown systems (section 16.3), continuous gas monitoring (section 16.4.2), fire detection equipment (section 16.4.3), water-based fire protection systems (section 16.5), and security enclosures (section 16.8.3).
Chapter 18: Operations, Maintenance, and Training (parts of sections 18.8 and 18.11.13 only).	• Introduces detailed requirements for commissioning of piping, pressure vessels, and controls systems (section 18.8); and enhances design and installation requirements for installed internal and external corrosion protection (section 18.11.13).

PHMSA understands many of the requirements within the above chapters of NFPA 59A–2026 are consistent with routinely imposed FERC conditions for LNG facilities.

PHMSA's preliminary evaluation of the above NFPA 59A–2026 chapters has identified a handful of requirements meriting exceptions or additions through targeted regulatory language in the new subpart C. PHMSA discusses below its proposals along those lines. In addition, PHMSA proposes deletion of the prefatory language found at the beginning of each of current subparts C (§ 193.2101), D (§ 193.2301), and E (§ 193.2401) limiting retroactive application of design, construction, and equipment requirements. These retroactivity provisions are redundant with the new § 193.3, which would broadly limit retroactive application of design, installation, and construction requirements to existing and certain replacement facilities and equipment.

D.1. Section 193.201—Scope

PHMSA proposes a new § 193.201(a)–(b) requiring the design, construction, and installation of LNG facilities to comply with the requirements of sections 5.2.3, 5.2.4, 18.8, and 18.11.13 and chapters 4, 6–13, and 15–16 of NFPA 59A–2026, subject to certain exceptions and additions as set forth in subsequent provisions of subpart C. The proposed amendment would replace existing provisions (§§ 193.2101, 193.2303, and 193.2401) describing the scope of application of current subparts C (design), D (construction), and E (equipment). PHMSA also proposes at § 193.201(b)(2) savings language that would incorporate by reference within the new subpart C certain design, construction, and installation standards that appear sporadically within NFPA 59A–2026 chapters that are nominally directed to O&M requirements. PHMSA expects that its proposed language (largely) referencing specific chapters and sections of NFPA 59A–2026, rather than unspecified provisions in that standard, will reduce occasions for conflict between NFPA 59A–2026 and part 193 requirements. Consequently, PHMSA has omitted the conflict preemption provision employed in each of §§ 193.2101, 193.2303, and 193.2401.

PHMSA proposes a new paragraph (c) disclaiming administration of AHJ authorizations within certain provisions of NFPA 59A–2026 incorporated by reference in the new subpart C. PHMSA believes those AHJ authorizations are more consistent with the prerogatives of other regulatory authorities or would add little safety value.[146] Specific AHJ authorizations within NFPA 59A–2026 that would be disclaimed include sections 8.2.1.1.1 (LNG storage tank risk assessments); 8.4.7.2.6 (LNG tank insulation repair procedures during facility commissioning); 13.13.3 (choice of source for rainfall amounts in calculating impounding area capacity); design, installation, and construction requirements for facilities within the marine cargo transfer area within section 15.5 (marine transfer and receiving); 15.8.7 (testing periodicity for marine loading/unloading hoses and arms used in transfer operations); and 18.11.13.3.3.1 (documentation of non-corrosive external environment). Paragraph (c) also disclaims from subpart C's incorporation by reference section 16.8.8 (governing periodicity for cybersecurity vulnerability assessments) and other miscellaneous standards throughout the NFPA 59A–2026 chapters and sections listed in § 193.201(b). PHMSA believes these standards are properly understood as O&M requirements rather than as design, installation, or construction requirements. Paragraph (c)(3) also excludes from incorporation into PHMSA regulations language within NFPA 59A–2026 requiring operator-specific ''approval'' for certain design, construction, installation, or testing related-actions. PHMSA does not believe these operator-specific approvals would add meaningful safety value.

PHMSA acknowledges that classifying particular NFPA 59A–2026 standards as design, construction, and installation requirements, rather than as O&M requirements, may differ from historical practice. For example, PHMSA and its predecessors have asserted that the LNG facility (49 U.S.C. 60103(c)) statutory prohibition on retroactive application of design, construction, installation, and initial testing only apply to ''containers, piping, and control systems *used directly* in the processing and handling of LNG . . . [and do] not apply to facilities that are needed to assure adequate fire protection capabilities, security, or safe operations at an existing plant.'' [147] PHMSA has understood that reading to mean that *any* LNG facility fire protection, security, or corrosion protection requirement—even those requiring design modifications or new construction for compliance—are O&M requirements exempt from statutory retroactivity limitations.[148] Successive editions of NFPA 59A have reflected that understanding in locating some

[146] Precisely which other regulatory authority or authorities are the AHJ(s) for each provision will turn on the statutory jurisdiction of each authority. NFPA 59A–2026 provisions not disclaimed by § 193.301(c) may be occasions to request a special permit pursuant to § 190.341.

[147] MTB, *Liquefied Natural Gas Facilities; Federal Safety Standards,* 45 FR 70390, 70391 (Oct. 23, 1980) (emphasis added). RSPA took the same position in subsequent rulemakings. *See* RSPA, *Liquefied Natural Gas Facilities—Clarifying and Updating Safety Standards,* 69 FR 11330, 11331–33 (Mar. 10, 2004).

[148] MTB, *Liquefied Natural Gas Facilities; Federal Safety Standards,* 45 FR 70390, 70391 (Oct. 23, 1980).

design, installation, and initial testing requirements within chapters dedicated to O&M—and, in at least one place, explicitly directing retroactive application to existing facilities.[149]

PHMSA believes that historical understanding is in tension with the language defining the scope of the (49 U.S.C. 60103(c)) statutory retroactivity prohibition. The retroactivity provision speaks in terms of ''liquefied natural gas facilities,'' which 49 U.S.C. 60101(a) defines to encompass any right-of-way, facility, building, or equipment—the statutory language contains no language limiting that prohibition to facilities ''used directly'' in processing activities. Nor does a reference within 49 U.S.C. 60103(d)(2) to ''fire prevention and containment equipment'' among the factors PHMSA must consider when selecting operation and maintenance regulatory requirements transform design, installation, and testing requirements for those systems into O&M requirements avoiding the statutory retroactivity prohibition. Rather, that statutory language stands for the truism that O&M requirements should reflect the systems to which they pertain.[150]

PHMSA's updated classification of part 193 and NFPA 59A–2026 requirements as design, installation, and testing requirements governed by § 193.201 reflects this more accurate understanding of 49 U.S.C. 60103(c). This corrected understanding is also the basis for PHMSA's proposal at § 193.201(c)(1) disclaiming the retroactive application of corrosion control requirements contemplated by NFPA 59A–2026 section 18.11.13.8. PHMSA acknowledges that its revised understanding of pertinent statutory language means that NFPA 59A–2026's updated design, installation, and initial testing requirements for fire protection, security, and cathodic protection systems will no longer automatically apply to existing facilities.

However, PHMSA does not expect this change in position to affect real-world safety adversely. Operators of existing facilities will remain incentivized for commercial reasons to align with their practices with the contents of NFPA 59A–2026, which memorializes industry consensus regarding the fire protection, security, and cathodic protection systems ensuring safety. In addition, operators of existing LNG facilities would remain subject to any obligations to comply with NFPA 59A–2026 fire protection, security, and cathodic protection system requirements that other Federal (*e.g.,* FERC) or State regulators have imposed or will impose in the future in connection with authorization for specific LNG facilities.

Lastly, PHMSA proposes in subparagraph (d) a special compliance provision for operators of FERC-jurisdictional LNG import and export facilities only. That provision would deem compliance with PHMSA subpart C security-related design, installation, and construction requirements based on provision of documentation verifying compliance with detailed USCG Facility Security Assessment (33 CFR part 105, subpart C) and FSP (33 CFR part 105, subpart D) requirements. With respect to those facilities, the 2004 Interagency Agreement recognizes USCG authority over physical security in the marine transfer area of waterfront LNG facilities. USCG regulations at 33 CFR part 105 contains detailed physical security plan development, operation, training, and recordkeeping requirements for facilities that are equivalent to or supplement many of the requirements in chapter 16 of NFPA 59A–2026. FSPs adopted by operators in complying with those USCG requirements typically are not limited to the marine transfer area, but rather extend to the entirety of an LNG plant. PHMSA expects operators employing this regulatory flexibility will provide documentation from USCG confirming compliance with applicable USCG regulations as applied to the entirety of the LNG plant.[151]

D.2. Section 193.203—Plant Design—Wind Speed

PHMSA proposes language at a new § 193.203 supplementing the wind force requirements in NFPA 59A–2026 for certain FERC-jurisdictional facilities. Current PHMSA regulations locate design wind resistance requirements governing LNG facilities at § 193.2067.[152] That provision begins with a generic requirement at § 193.2067(a) that all LNG facilities be designed ''to withstand . . . the direct effect of wind forces.'' Paragraph (b) of that same provision supplements the generic wind forces requirement with facility-specific minimum requirements: low-capacity (70,000 gallons or less) shop-fabricated containers of LNG and other hazardous fluids must comply with the requirements of ASCE/SEI 7–2005, while all other LNG facilities must design for wind force resistance based on either a default sustained wind velocity of 150 mph [153] (with some flexibility to employ a lower value as approved by the PHMSA Administrator), or the ''most critical combination'' of wind velocity and duration over the equivalent of a 10,000-year mean recurrence interval (MRI).

Part 193's current design wind force resistance requirements reflect more than two decades of effort to strike an appropriate balance between compliance costs and adequate protection from the public safety risks. When proposing the design wind resistance requirements in 1979, MTB struggled to identify an appropriate balance between those values. Concerned with the high compliance costs for measures addressing uncertain public safety risks, MTB initially proposed more demanding requirements than those found in current regulations for a more limited universe of buildings and structures: only ''critical components'' would be subject to a generic, broadly worded design wind velocity requirement referencing a then-leading industry standard. And within

[149] *See, e.g.,* NFPA 59A–2026 at sections 18.8 and 18.11.13 (commissioning testing and corrosion protection design requirements, respectively) and section 18.11.13.8 (requiring retroactive application of corrosion protection on some existing facilities).

[150] *See* MTB, *Liquefied Natural Gas Facilities; Federal Safety Standards,* 45 FR 70390, 70391 (Oct. 23, 1980). MTB's reading of 49 U.S.C. 60103(d)(2) seems particularly artificial in that it avoids trying to make a similar argument based on broader language referencing any ''equipment and structures'' in the preceding subparagraph (1). Unsurprisingly, subsequent defenses of MTB's understanding de-emphasized the statutory authority argument in favor of appeals to continuity with historical practice and the safety value of maintaining MTB's strained reading of the statute. *See* RPSA, *Liquefied Natural Gas Facilities—Clarifying and Updating Safety Standards,* 69 FR 11330, 11331–33 (Mar. 10, 2004).

[151] PHMSA has not proposed an analogous provision deeming compliance with physical-security related subpart C design, installation, and construction requirements based on documentation of compliance with TSA Pipeline Security Guidelines because that guidance has only limited requirements on those topics.

[152] Another provision at § 193.2101 broadly requires LNG facility designs comply with NFPA 59A–2001. However, NFPA 59A–2001 directly addresses design wind speed only in connection with select facilities and equipment (*e.g.,* dikes, impounding systems at section 2.2.2.4; LNG storage containers at sections 4.1.4 and 4.2.2.3(f); ASME container foundation supports at section 10.5.1); it does not prescribe design wind speed resistance parameters that are generically applicable to LNG facilities and equipment. NFPA 59A–2001's references to wind speed resistance design parameters are vague, consisting of references to ''recognized structural engineering practices'' or the 2005 edition of ASCE/SEI–7 (without mention of specific provisions therein).

[153] PHMSA notes, however, that the ''sustained wind velocity'' metric employed in § 193.2067 is not typically used by structural engineers, who instead determine wind force design resistance based on three second gust speeds. LNG FAQ D1 therefore elaborates that the 150 mph ''sustained wind velocity'' at § 193.2067(b)(2)(i) correlates to a three second gust speed of ca. 180 mph when ''using a conservative method based on sound engineering principles'' such as the Durst curve approach specified in ASCE/SEI 7–05.

that limited universe, the most safety-consequential components (LNG storage tanks and dikes) would also be subject to a 250-mph default sustained wind velocity requirement, which MTB conceded may have been ''too stringent.'' [154] In the 1980 final rule, however, MTB landed on a different balance between the competing values of cost and safety risk. While expanding the application of design wind resistance requirements to the entirety of LNG facilities, MTB lowered the default sustained wind velocity requirement to 200 mph in response to cost concerns magnified by available wind speed data suggesting even that lower value was overly conservative.[155] Two decades later, RSPA lowered the default sustained wind velocity again, citing historical hurricane data noting the infrequency of winds above 150 mph in concluding that a 200 mph sustained wind velocity requirement was ''excessive.'' [156] This debate has continued in the years since. Operators have criticized PHMSA's design wind resistance requirements—particularly the default sustained wind velocity requirement at § 193.2067(b)(2)(i)—as needlessly expensive and overbroad, subjecting even structures (*e.g.,* storage sheds) functionally and physically removed from gas processing activities to the same wind velocity specifications as in-plant piping containing hazardous fluids.[157]

Recent editions of NFPA 59A attempt to address this concern. The 2013 edition of NFPA 59A introduced within a new section 5.4 generally applicable design requirements covering all buildings, structures, and systems at LNG facilities. That new approach sorted buildings, structures, and systems within LNG facilities among different classifications by function—and, by extension, the potential public safety risks arising in the event of a structural failure from forces (including wind forces) on those buildings, structures, and systems. In assigning design requirements to each classification within LNG facilities, the 2013 edition of NFPA 59A leveraged design parameters (including design wind resistance) set forth in the 2010 edition of ASCE/SEI–7 for different categories of buildings and structures based on the risk to public safety from a failure of structural integrity. The table below summarizes NFPA 59A–2026's classification scheme (found at sections 8.3.2.2 and 12.2.1) for different buildings, structures, and systems within an LNG facility, as updated through the 2026 edition of that standard referencing the 2022 edition of ASCE/SEI–7:

NFPA 59A classification	ASCE/SEI 7–2022 category	Design wind force resistance (years)
Classification A: LNG tank systems, buildings, structures, and systems, including equipment and piping.	NFPA 59A–2026 section 8.3.2.2	10,000
Classification B: Buildings; enclosures; and structures, including the main control room; supporting containers other than LNG tank systems; equipment; and piping that contain hazardous fluids, as well as containers other than LNG tanks systems, equipment, and piping that contain hazardous fluids that are not in a building.	Risk Category III	1,700
Classification C: All other buildings, equipment, piping, and structures	Risk Category II	700

PHMSA has evaluated the above NFPA 59A–2026 classification scheme and preliminarily determined that, with respect to design wind force resistance, it strikes an appropriate balance between compliance costs and public safety risks for most buildings, structures, and systems within PHMSA-jurisdictional LNG facilities. Unlike the current one-size-fits-all approach in § 193.2067, NFPA 59A–2026's approach calibrates design wind force resistance for specific buildings, structures, and systems consistent with their function—which part 193 regulations have historically assumed correlates to public safety risk. The specific design parameters addressing wind and other forces, moreover, reflect the considered, consensus judgment of regulators and industry subject matter experts throughout the LNG industry—as well as among the structural engineers contributing to ASCE/SEI–7–2022.

Yet, PHMSA understands a slightly different approach is merited for the design wind force resistance of certain buildings, structures, and systems within LNG facilities whose structural failure would result in the highest potential public safety risks. Specifically, PHMSA proposes in a new § 193.203 that—rather than basing design wind force resistance on a 1,700-year MRI wind velocity as contemplated in NFPA 59A–2026—Classification B buildings, structures, and systems within FERC-jurisdictional import and export facilities must be designed to withstand wind forces based on a 10,000-year MRI wind velocity. PHMSA notes this proposal is consistent with the 10,000-year MRI wind velocity prescribed in existing design wind force resistance requirements at § 193.2067(b). PHMSA's proposal also reflects that Classification B buildings, structures, and systems contain or control hazardous fluids; a loss of their integrity due to wind forces would itself be a potential hazard to public safety, and could (depending on the system, failure mechanism, and hazardous fluid) also pose a potential hazard to the integrity of Classification A buildings, structures, and systems.

PHMSA acknowledges that this proposal could entail non-trivial compliance costs for affected operators, and therefore proposes to limit its application to FERC-regulated LNG import and export facilities whose waterfront locations, complex system configurations, and large volumes of LNG and other hazardous fluids entail comparatively greater public safety risks than other PHMSA-jurisdictional facilities.[158] PHMSA notes that such capital-intensive facilities are also often better-positioned to absorb compliance costs associated with designing Classification B structures, buildings,

[154] MTB, *LNG Facilities; Federal Safety Standards,* 44 FR 8142, 8153 (proposed Feb. 8, 1979) (proposing a new § 193.117)

[155] RSPA, *Liquefied Natural Gas Facilities; New Federal Safety Standards,* 45 FR 9184, 9198–99 (adopting § 193.2067); MTB, *Liquefied Natural Gas Facilities; Reconsideration of Safety Standards for Siting, Design, and Construction,* 45 FR 57402, 57414–45 (Aug. 28, 1980).

[156] RSPA, *Pipeline Safety: Incorporation of Standard NFPA 59A in the Liquefied Natural Gas Regulations,* 63 FR 70735, 70738 (proposed Dec. 22, 1998); RSPA, *Pipeline Safety: Incorporation of Standard NFPA 59A in the Liquefied Natural Gas Regulations,* 65 FR 10950, 10954 (Mar. 1, 2000).

[157] *See, e.g.,* Eversource, *Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7602, at 18 (July 7, 2025).

[158] By way of example, the 1,700-year MRI in Cameron, LA, is 150 mph, whereas the 10,000 year-MRI is 172 mph—a nearly 15 percent difference.

and systems to withstand higher wind velocities.

D.3. Section 193.205—Vaporizers: Isolation Valves

PHMSA proposes in a new § 193.205 to require vaporizer equipment to have both inlet and outlet isolation valves. These valves are positioned at the entry and exit points of equipment piping and play a crucial role in ensuring the safe operation, maintenance, and inspection of that equipment. For example, during maintenance or inspection, operators close these isolation valves to allow the piping to empty its contents and purge hazardous fluids, ensuring operator safety during equipment removal.

NFPA 59A–2001 at section 5.3.1 specifies that a manifolded vaporizer needs to have both inlet and discharge block valves at each vaporizer.[159] This requirement is essential because it ensures that inlet and outlet vaporizers can be isolated during maintenance while remaining vaporizers within the same manifold assembly continue to operate. However, the corresponding provisions of NFPA 59A–2026 (sections 9.3.3 and 9.4.1) do not explicitly state that an operator must install both an inlet and outlet discharge valves on each vaporizer. Given the safety value, PHMSA proposes to retain the historical NFPA 59A–2001 requirement at § 193.205, which would continue to mandate that each manifolded vaporizer be equipped with both inlet and outlet isolation valves.

D.4. Section 193.207—Impoundment Structural Requirements

PHMSA proposes to redesignate impoundment structural requirements at § 193.2155(a) in a new § 193.207 and to eliminate certain historical language that would be redundant with requirements in chapter 13 of NFPA 59A–2026. Under this proposal, PHMSA would maintain current § 193.2155 requirements that all impoundment systems must be designed and constructed to maintain their reliability and structural integrity while considering various factors. These factors include the effects of erosive impact of spilled LNG and potential impacts from the collapse of components or collisions by vehicles near LNG facilities.

[159] A manifolded vaporizer is part of a system of vaporizers designed with common inlet and outlet piping.

D.5. Section 193.209—Water Removal From Impounding Areas

PHMSA proposes to redesignate the current impounding area water removal requirements in § 193.2173 within a new § 193.209, to revise current regulatory language to delete redundancies with NFPA 59A–2026 requirements (including those at section 13.13), and to retain other text supplementing NFPA 59A–2026 provisions where appropriate for safety.

Impoundment systems must be free of water to provide sufficient volume to contain LNG or other hazardous fluids from a potential spill. Water removal is also required because the vaporization rate of LNG increases if water is present in an impoundment, creating a larger vapor cloud and the potential for a rapid phase transition explosion. Given the importance of water removal, PHMSA proposes to retain in paragraph (a) existing performance-based language within § 193.2173(a) requiring the construction of impounding areas to ensure water is ''completely'' drained, rather than the less demanding and qualified (''as dry as practicable'') language in section 13.13.2 of NFPA 59A–2026. For the same reason, PHMSA also proposes retaining other language in § 193.2173(a) requiring operators to construct impoundment areas with proven, active water removal systems (including drainage pumps and piping), rather than relying exclusively on passive dewatering (*e.g.,* gravity drain) systems whose performance is hard to evaluate under real-world conditions and can be quickly degraded by clogging. Lastly, PHMSA proposes to revise the data source for determining rainfall amounts specified in § 193.2173(b) to reflect that the *Rainfall Frequency Atlas of the United States* published by the National Weather Service, which is now online and available through the Precipitation Frequency Data Server.

D.6. Section 193.211—Non-Destructive Examination (NDE) of Hazardous Fluid Storage Tanks

PHMSA proposes to redesignate and to retain existing requirements at § 193.2321(a) for non-destructive testing of certain welds in the metal shells of storage tanks for LNG and other hazardous fluids within a new § 193.211. PHMSA in 1981 adopted the § 193.2321(a) requirements because the pertinent language in historical editions of NFPA 59A (and the language within other industry standards referenced by those editions of NFPA 59A) lacked specificity adequate to ensure the integrity of welds with difficult to perform geometries, which are subject to challenging operating parameters (*e.g.,* cryogenic conditions) and whose integrity is critical to minimizing the release of LNG and other hazardous fluids.[160] PHMSA has reviewed pertinent provisions of NFPA 59A–2026 (as well as other industry standards referenced therein) and preliminarily determined that historical criticism still holds. PHMSA consequently proposes to retain the § 193.2321(a) language addressing that concern to supplement pertinent provisions of NFPA 59A–2026.

E. Subpart D—Permanent, Small-Scale LNG Facilities

Consistent with the mandate in the PIPES Act of 2016, PHMSA proposes to create a new subpart D prescribing calibrated, risk-based safety requirements for certain permanent (*i.e.,* stationary), small-scale LNG facilities appropriate. This new subpart will consist largely of the incorporation by reference of chapter 17 of NFPA 59A–2026 dedicated to those facilities.

When PHMSA last updated part 193 in 2001, a one-size-fits-all regulatory framework encompassing permanent, small-scale LNG facilities and larger facilities was appropriate. As discussed in section II.A. above, most LNG facilities at that time were peak shaving facilities with relatively small capacities and similar—and relatively simple—liquefaction and vaporization processes, often with fewer hazardous fluids and less extensive equipment. Many such facilities also operate intermittently or seasonally. But the LNG industry has evolved considerably in the past 25 years, and a consensus has emerged among interested stakeholders that the current part 193 requirements are no longer appropriate for most permanent, small-scale LNG facilities.[161]

[160] *See* MTB, *LNG Facilities; Federal Safety Standards,* 44 FR 8142, 8165 (proposed Feb. 8, 1979) (explaining proposed § 193.1027(d)); RSPA, *Liquefied Natural Gas Facilities; New Federal Safety Standards,* 45 FR 9184, 9202 (Feb. 11, 1980) (endorsing the NPRM's reasoning, albeit with redesignation as § 193.2321).

[161] *See, e.g.,* BLUE, *Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7503, at 4, 10–11.

The 2019 edition of NFPA 59A introduced a new chapter 17 with targeted provisions for permanent (or, as referred to in NFPA 59A, ''stationary''), small-scale facilities. Earlier editions of NFPA 59A (including NFPA 59A–2001 at chapter 10) had included specific requirements for LNG facilities with certain components (ASME containers) that had relatively small capacity—but did not address other smaller-capacity facilities, which created confusion as to whether those requirements supplemented or replaced requirements throughout the rest of NFPA 59A.[162] In developing the 2019 edition of NFPA 59A, NFPA formed a task group of industry representatives and Federal regulators (including personnel from PHMSA, FERC, and USCG) to address these concerns. The task group's work ultimately led to the addition of chapter 17 within NFPA 59A–2019. Section 17.1 establishes certain eligibility criteria (including individual LNG tanks and aggregate LNG plant-wide storage capacity; aggregate mass of hazardous fluids and toxic fluids within an LNG plant; pipe diameter; and maximum allowable working pressure) based on hazard consequence magnitude, an approach that had historically informed requirements throughout NFPA 59A.[163] The balance of chapter 17 sets forth siting, design, construction, installation, maintenance, and operating requirements scaled to the distinguishable hazards of permanent, small-scale LNG facilities; requirements not listed in chapter 17 would not apply to eligible LNG facilities.

The eligibility and safety requirements in the 2019 edition of NFPA 59A are largely unchanged in NFPA 59A–2026. Applicable requirements—many of which apply the requirements governing large LNG facilities—are summarized in the table below:

NFPA 59A–2026 chapter 17 requirement	Summary
17.3.1 (Siting Evaluation)	• Requires a written plant and site evaluation of consequences from identified potential hazards to public safety.
17.3.2 (Impoundments and Setback Distances).	• Requires performance of an analysis to determine the practical limit of un-impounded spills and sets forth impoundment and containment requirements in the event a release would not remain on operator property. • Establishes mechanisms for determining setback distances from LNG containers to property lines.
17.4 (Plant Layout)	• References the entirety of chapter 6 (Plant Layout) requirements other than separation distances for particular components; setback distances are calculated either by formula (Table 17.3.2.2.2) or prescribed setback distances in Tables 17.3.2.2.3&4 consistent with setback distances for other facilities in Table 6.3.1.
17.5 (Process Equipment) ...	• References the entirety of chapter 7 (Process Equipment) design, installation, construction, and initial testing requirements.
17.6 (Stationary LNG Storage).	• References most chapter 8 (Stationary LNG Storage) design, installation, construction, and initial testing requirements, albeit supplemented with enhanced requirements for pipe penetration location (17.6.3), automatic fail-safe product retention valves on certain piping (17.6.3), and pressure gauge installation (17.6.4).
17.7 (Vaporization Facilities)	• References the entirety of chapter 9 (Vaporization Facilities) design, installation, construction, and initial testing requirements.
17.8 (Piping System and Components).	• Requires all piping containing LNG to comply with the entirety of design, installation, construction, and initial testing requirements in chapter 8 (Stationary LNG Storage). • Requires all other piping in hazardous fluid service to comply with the entirety of chapter 10 (Piping Systems and Components) or ASME B31.3 (Process Piping).
17.9 (Instrumentation and Electrical Services).	• References the entirety of chapter 11 (Instrumentation and Electrical Services) design, installation, construction, and initial testing requirements.
17.10 (Plant Facilities Design).	• References the entirety of chapter 12 (Plant Facilities Design) design, installation, construction, and initial testing requirements.
17.11 (Impounding Area and Drainage System Design Capacity).	• References the entirety of chapter 13 (Impounding Area and Drainage System Design Capacity) design, installation, construction, and initial testing requirements when required by the section 17.3.2 siting evaluation.
17.12 (Transfer Systems for Hazardous Fluids).	• References the entirety of chapter 15 (Transfer Systems for Hazardous Fluids) design, installation, construction, and initial testing requirements.
17.13 (Fire Protection, Safety, and Security).	• References the entirety of chapter 16 (Fire Protection, Safety, and Security) requirements.
17.14 (Operations, Maintenance, and Personnel Training).	• References the entirety of chapter 18 (Operations, Maintenance, and Personnel Training) other than badging requirements at section 18.5.1(6) and certain requirements governing operations in the marine cargo transfer area operations.

PHMSA subject matter experts have reviewed NFPA 59A–2026 chapter 17 and preliminarily determined that its incorporation would enhance the safety of eligible permanent, small-scale LNG facilities. As discussed in section II.A.3.c above, all LNG facilities—including permanent, small-scale LNG facilities—have a strong safety record under the current part 193 regulations, which are far less robust than the NFPA 59A–2026 requirements PHMSA now proposes to adopt. PHMSA expects incorporation of chapter 17 (which employs the great majority of those enhanced requirements) within the new subpart E will build on that strong safety record.

PHMSA recognizes that NFPA 59A–2026 chapter 17 provides operators with additional flexibility in implementing certain requirements for permanent, small-scale LNG facilities, which have characteristics (lower storage volumes, fewer—by type and volume—hazardous fluids, and intermittent operations) that are distinguishable from other LNG facilities. For example, chapter 17 does not require exclusion zones based on hazard modeling as is required under

[162] Quest, *PHMSA Small-Scale LNG Risk-Based Criteria* at 3, A–4 (May 2017) (recording conclusions of workshop comprised of industry and Federal regulatory representatives chaired by PHMSA).

[163] Most of those eligibility criteria have also been adopted by at least one international standards development organization. *See* Canadian Standards Ass'n Grp., No. Z276–18, *Liquefied Natural Gas (LNG)—Production, Storage, and Handling,* section 3 (2018).

the current part 193 regulations.[164] However, permanent, small-scale LNG facilities would remain subject to most of the design, installation, construction, testing, maintenance, and operations requirements in NFPA 59A–2026, providing defense-in-depth against the hazards associated with releases from such facilities. Chapter 17 also includes robust requirements for site evaluation (section 17.3.1), impoundment analysis and installation (section 17.3.2.1), and setback restrictions (section 17.3.2.2). PHMSA has preliminarily determined that these requirements address the siting-related risks to the public associated with releases from small-scale LNG facilities.[165]

For these reasons, PHMSA proposes a new § 193.401 incorporating by reference the entirety of NFPA 59A–2026 chapter 17 within a new subpart E. LNG facilities satisfying the eligibility criteria in chapter 17 would comply only with the requirements referenced in that chapter (in addition to the general requirements applicable to all LNG facilities at part 193, subpart A); other requirements in NFPA 59A–2026 would be inapplicable. PHMSA does not propose that operators be required to notify or to obtain permission from PHMSA to use chapter 17 (though, as discussed in sections III.B and III.D above, such designation should be memorialized in their part 191 OPID assignment and annual reports). PHMSA further notes that its proposed language at § 193.401 provides that, should chapter 17 reference a requirement in another chapter of NFPA 59A–2026 which this NPRM proposes to supplement, replace, or except by way of amendments to part 193, PHMSA's proposed part 193 language would apply as well in connection with chapter 17. Lastly, PHMSA expects operators will comply with the entirety of either chapter 17 or all other pertinent chapters of NFPA 59A–2026; operators will not be able to pick-and-choose requirements from chapter 17 and elsewhere in NFPA 59A–2026.

F. Subpart E—Operations and Maintenance

PHMSA proposes to create a new subpart E consolidating current subparts F (Operations), G (Maintenance), H (Personnel Qualifications and Training), I (Fire Protection), and J (Security). The new subpart D will consist largely of incorporated chapters and sections of NFPA 59A–2026.[166]

Unlike existing part 193 regulations for design, construction, and installation requirements discussed in section IV.C. above, part 193 subparts governing O&M at LNG facilities do not broadly reference NFPA 59A–2001 standards. Only subpart I (Fire Protection) incorporates by reference certain corresponding NFPA 59A–2001 requirements (specifically, sections 9.1 through 9.7 and section 9.9). The O&M requirements in part 193 are derived from unique regulatory provisions. Successive editions of NFPA 59A have incorporated and elaborated on corresponding part 193 O&M requirements such that many of the O&M standards within NFPA 59A–2026 resemble the current language in part 193. Lastly, as discussed in section IV.D.1 above, more recent editions of NFPA 59A have also included a handful of O&M standards within chapters and sections nominally focused on design, construction, and installation requirements.

PHMSA now proposes in a new § 193.301 to consolidate within subpart D current subparts F (Operations), G (Maintenance), H (Personnel Qualifications and Training), I (Fire Protection), and J (Security). PHMSA also proposes the new subpart D will incorporate by reference the entirety of certain chapters of NFPA 59A–2026 focused on O&M requirements, as well as specific operating and maintenance requirements scattered throughout other chapters focused on design, testing, and installation requirements.[167] Those NFPA 59A–2026 chapters and sections proposed for incorporation by reference into the new subpart C are listed in the table below.[168] The table also summarizes PHMSA's assessment of how each of those chapters contribute to safety enhancements compared to corresponding part 193 subparts and the historical edition of NFPA 59A referenced in part 193, subpart I:

NFPA 59A–2026 chapter	Notable safety-enhancing elements
Chapter 4, section 4.6: Management of Change.	• Introduces detailed change management processes to ensure adequate understanding and control of risks associated with significant procedural and physical changes to an LNG facility.
Chapter 16: Fire Protection, Safety, and Security.	• Introduces a requirement for operators at each facility to perform a fire protection evaluation that would be reviewed every two years (section 16.2.1.3). • References leading consensus industry standards, specifically NFPA, that would govern operation and maintenance of enhanced fire protection systems (section 16.1.2.5). • Expands fire protection to include fire hazards associated with hazardous fluids generally—not just LNG. • Includes more detailed leak detection and alarm requirements for LNG and other hazardous fluids (section 16.4).

[164] *See* LNG FAQ, G1.

[165] PHMSA understands neither the spill ''analysis'' requirement at section 17.3.2.1.1 nor the accompanying Appendix guidance require hazard modeling or detailed calculations similar to those operators must employ in ''calculation of the ''extent of hazards'' pursuant to NFPA 59A–2026 chapter 5. Rather, qualitative reasoning (supported by brief calculations as appropriate) would be sufficient ''analysis'' under section 17.3.2.1.1.

[166] PHMSA in this section will collectively refer to these requirement as ''operations and maintenance'' requirements as distinguished from ''design, construction, and installation'' requirements discussed in section IV.D above.

[167] PHMSA has consolidated within a list (titled ''Identification of NFPA 59A Operations and Maintenance Provisions'') placed in the rulemaking docket all O&M requirements across NFPA 59A–2026 that it proposes for incorporation by reference in the new subpart D. Although the above table does not (for the sake of brevity) identify each of those NFPA 59A–2026 sections, PHMSA understands each enhances safety compared to current part 193 requirements. Should stakeholders identify additional standards meriting characterizing as O&M requirements, or object to PHMSA's classification of specific standards within the list placed in the docket, they may identify those concerns in their comments on the NPRM, or (after issuance of a final rule) submit a request for interpretation pursuant to § 190.11(b).

[168] PHMSA does not propose that § 193.301 would incorporate by reference design, construction, and installation provisions scattered throughout the chapters listed in this table. Rather, those provisions would be incorporated by reference pursuant to PHMSA's proposed § 193.201 governing those requirements.

NFPA 59A–2026 chapter	Notable safety-enhancing elements
Chapter 18: Operating, Maintenance, and Personnel Training.	• Introduces an explicit requirement for operators to audit their operations and maintenance requirements periodically (section 18.2.2(8)). • Adds explicit requirements for operators to have procedures for managing contractor activities (section 18.2.4). • Introduces a requirement for operators to have incident investigation procedures (section 18.5). • Relocates within mandatory content provisions related to security (section 18.6) and training (section 18.12) that in NFPA 59A–2001 had been placed in non-mandatory appendices. • Enhances and builds on the existing part 193 requirements governing maintenance, operations, and emergency response activities (section 18.3). • Introduces enhanced security assessment procedures (section 18.6) that may overlap with existing DHS/TSA security requirements. • Adds provisions providing for maintenance on pipe-in-pipe systems (section 18.10). • Adds detailed requirements for fire protection control system inspection and testing (section 18.11.10). • Adds an annual update requirement for emergency procedures (section 18.4.8). • Adds periodicities for inspection of component foundations (section 18.11.3), tank foundations (section 18.11.11), insulation on impounding surfaces (section 18.11.5), relief valves (section 18.11.10.7), LNG tanks (section 18.11.11), and miscellaneous control systems (section 18.11.10). • Adds more detailed corrosion control inspection and maintenance requirements (section 18.11.13).

PHMSA understands that many of these NFPA 59A–2026 requirements are consistent with routinely imposed FERC conditions for LNG facilities. PHMSA's preliminary evaluation of the above NFPA 59A–2026 materials has also identified a handful of requirements meriting additions or exceptions in the new subpart D. PHMSA discusses each of those proposals below.

F.1. Section 193.401—Scope

PHMSA proposes a new § 193.401(a) requiring operators of LNG facilities to comply with the operation and maintenance standards in NFPA 59A–2026, subject to certain exceptions and additions as set forth in subpart E. This proposed requirement would replace existing provisions (§§ 193.2501, 193.2601, 193.2701, 193.2801, and 193.2901) describing the scope of application of current subparts F (Operations), G (Maintenance), H (Personnel Qualifications and Training), I (Fire Protection), and J (Security). PHMSA also proposes at § 193.401(a)(2) a savings clause that would incorporate by reference within the new subpart D certain O&M standards located throughout chapters of NFPA 59A–2026 that are properly characterized as design, construction, and installation requirements. As explained earlier, the current versions of subparts F, G, H, I, and J do not contain a regulatory conflict preemption provision, and PHMSA is not proposing to add such a provision in this proceeding.

PHMSA notes that, as proposed, § 193.401(a) would except from the scope of the O&M requirements certain miscellaneous provisions in chapter 16 of NFPA 59A–2026 chapters that are properly understood as design, installation, construction, or initial testing standards. Those include, but are not limited to, design, installation, construction, and initial testing standards within the following provisions:

NFPA 59A–2026 provision	Description
16.2.1.4 and 16.2.1.5.	Design, installation, and testing of new or modified fire protection systems in response to fire protection evaluations.
16.3	Emergency shutdown systems design, installation, and testing.
16.4.2	Gas detection systems continuous monitoring system design and installation.
16.4.3	Fire detection systems continuous monitoring system design and installation.
16.5	Fire protection water systems design and installation.
16.8.3	Security enclosure installation requirements.
16.8.7	Plant lighting requirements.
18.11.13.2	Atmospheric corrosion control design and installation requirements.
18.11.13.3	External corrosion control design and installation requirements for buried or submerged components.
18.11.13.3	Internal corrosion control design and installation requirements.
18.8	Commissioning requirements.

As discussed in greater detail in section IV.D.1 above, the design, installation, and testing standards listed above would not apply retroactively to existing LNG facilities. Consistent with that understanding, PHMSA proposes in paragraph (b) to disclaim NFPA 59A–2026 design, installation, and testing standards in chapters 16 and 18. PHMSA also proposes to disclaim standards at section 18.9.7 governing operations in the marine cargo transfer area, which are subject to USCG regulations at 33 CFR part 127.

F.2. Section 193.403—Purging

PHMSA proposes to supplement certain standards for purging in NFPA 59A–2026 at section 18.7.5. Section 18.7.5 lays out requirements for purging piping and equipment of combustible fluids before initial placement into service, as well as in connection with subsequent entry and exit from service (*e.g.,* due to maintenance). Some of those requirements, however, are expressed in broad, performance-based language; more detailed requirements in the leading consensus industry standard on purging practices—AGA's *Purging Manual*—are only offered as non-binding guidance in the Appendix discussion of section 18.7.5. Section 18.7.5.4 also contemplates that operators would have the flexibility to depart from the typical practice of using inert media or mechanical means when conducting cleaning, drying, and tightness testing, either if they obtain approval pursuant to a § 190.341 special permit or if they determine that they have complied with NFPA 56.

PHMSA proposes to adopt a new § 193.403(a) requiring operators to comply with chapters 1, 2, and 6 of the AGA *Purging Manual* when implementing the purging protocols in NFPA 59A–2026 section 18.7.5. Chapter 1 of the AGA *Purging Manual* provides general requirements and considerations for purging, such as describing the duties of those assigned to purging operations and the guidelines for personnel and public safety during purging operations. Chapter 6 of the AGA *Purging Manual* provides instructions for purging specific components, including the documentation of purging plans or

procedures—which may change depending on the system being purged and the purpose of the purging (*e.g.,* purging into LNG service, purging out of LNG service, emptying a piping system, or cooling down a system). Chapter 2 of the AGA *Purging Manual* provides detailed requirements for the identification of appropriate purging endpoints.

PHMSA also proposes a new § 193.403(b) that would exclude the process under section 18.7.5.4 to deviate from the default requirement for inert gas or mechanical means for cleaning, drying, and tightness testing without a special permit. Proper purging with inert gas (or via mechanical means) guarantees non-flammable or inert conditions that are crucial for operational safety in LNG facilities—a lesson learned from several incidents involving inadequate purging practices that led to significant personal injuries and property damage.[169] The significant potential safety risks from departing from consensus industry best practices for purging merit case-by-case evaluation by PHMSA pursuant to a § 190.341 special permit application.

F.3. Section 193.405—Communication Systems

PHMSA proposes to adopt a new § 193.405 with requirements for communication systems. Section 193.405 would incorporate certain standards in NFPA 59A–2026 for communications systems and retain requirements in the current regulation for communication systems at § 193.2519.

NFPA 59A–2026 in several places prescribes minimum communication system standards for transfer operations (section 15.9 and various places in chapter 18) and security functions (section 16.8.4). However, these standards only apply to certain operations and functions and do not require access to verbal communications from every workstation in an LNG plant as currently required by § 193.2519. NFPA 59A–2026 also prescribes certain standards for emergency communications systems, but these standards lack the requirement in § 193.2519(b) that such systems be independent of other communications systems.

Therefore, PHMSA proposes to retain within a new § 193.405 the more detailed communication requirements within current § 193.2519(a)–(b). Communication throughout an LNG plant is critical during normal and emergency operations alike; delays in initiating or receiving communication at the beginning of an incident can make the difference in timely avoidance and mitigation of significant public safety consequences. Retaining the current § 193.2519(a)–(b) requirements will help to ensure that reliable means of communications are available to personnel throughout an LNG plant in those critical moments.

F.4. Section 193.407—Maintenance Procedures

PHMSA proposes to adopt a new § 193.407 for maintenance procedures. Section 193.407 would supplement the standards in NFPA 59A–2026 for O&M procedures to ensure adequate safety-related condition reporting and adequate equipment isolation during maintenance activity. Section 18.10 of NFPA 59A–2026 contains detailed content standards for maintenance procedures. However, unlike the current regulations at § 193.2605(c), section 18.10 of NFPA 59A–2026 does not direct operator personnel to recognize and report safety-related conditions pursuant to § 191.23. PHMSA proposes to retain that longstanding requirement in a new § 193.407(a).

Similarly, although NFPA 59A–2026 acknowledges the safety value of robust system isolation practices to protect maintenance personnel in system design requirements and in non-binding guidance, the maintenance standards in section 18.10 do not articulate specific minimum requirements for mechanical and electrical isolation of systems during maintenance activity. PHMSA proposes to address that omission by adding a new requirement at § 193.407(c) that maintenance procedures provide for redundant methods of mechanical and electrical isolation. Mechanical isolation for hazardous fluid systems would require not only use of installed isolation valves, but also additional techniques (*e.g.,* removal of spool pieces or valves to ''blank flange'' piping; double block and bleed valving). Electrical isolation would be accomplished by ''tag-out'' procedures consisting of de-energizing and ''locking out'' electrical systems.

F.5. Section 193.409—Personnel Qualification and Training

Section 18.12 of NFPA 59A–2026 contains detailed standards for personnel qualification; training program design, content, and implementation; and recordkeeping of training activity. However, some of the standards in section 18.12 lack specificity necessary to support adequate implementation and oversight. PHMSA proposes a handful of additional requirements in a new § 193.409 to address these concerns.

First, PHMSA proposes to specify in paragraph (a) the minimum content (*e.g.,* name of personnel receiving training; the tasks for which they are being trained) of training records. The intent of this provision is to facilitate operator compliance with the training requirements and to ensure adequate regulatory oversight during investigations of contributing factors to incidents and safety-related conditions. Second, PHMSA proposes in paragraph (b) that all operator personnel must receive first-aid training to ensure that they can help other personnel in the event of an incident. Third, PHMSA proposes in paragraph (c) that all operator personnel involved in O&M activities—who are often best-positioned to identify safety-related conditions—receive training on recognition and reporting of the same as required by § 191.23. PHMSA also proposes that such training be held for immediate supervisors of such personnel (even if the immediate supervisors are only indirectly participating in the O&M activity) to help reinforce the training requirement for front-line O&M personnel. Fourth, PHMSA proposes in paragraph (d) to retain the requirement in the current version of § 193.2711 that operator training programs include protocols ensuring personnel do not have health conditions that would affect their performance of safety-critical responsibilities.

F.6. Sections 193.411 and 193.413—Fire Protection, Safety, and Security

PHMSA proposes to adopt fire protection, safety, and security requirements at sections 193.411 and 193.413. NFPA 59A–2026 contains extensive standards governing fire protection system performance (chapter 16), fire protection emergency procedures (section 18.4), fire protection system inspection and testing (section 18.11.10), and fire protection training (section 18.12.2.2). NFPA 59A–2026 also contains detailed standards for physical security system performance (section 16.8), security procedures (section 18.6), and personnel security training (section 18.12.2.3). PHMSA only proposes minimal additions to these standards. Specifically, PHMSA proposes in a new § 193.411 a semi-annual inspection and testing requirement for fire protection control

[169] *See, e.g.,* PHMSA, *Failure Investigation Report—Liquefied Natural Gas (LNG) Peak Shaving Plant, Plymouth, Washington* (Apr. 28, 2016), available at: *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/FIR_and_APPENDICES_PHMSA_WUTC_Williams_Plymouth_2016_04_28_REDACTED.pdf.*

systems to maintain consistency with the current requirement at § 193.2619(c)(2).

PHMSA also proposes to qualify certain fire protection and security standards in NFPA 59A–2026. First, as noted in section IV.D.1, PHMSA is not proposing to incorporate the requirement in section 11.7.2 of NFPA 59A–2026 to conduct periodic cybersecurity vulnerability assessments. DHS has primary responsibility for the security of pipeline facilities, including LNG facilities, under the terms of a 2004 Memorandum of Understanding with DOT. As discussed in section II.A.3, TSA has issued a series of directives imposing cybersecurity program planning, response, and periodic assessment requirements on certain LNG facilities—to date, a handful of peak shaving facilities—designated as ''critical'' facilities.[170] TSA has also included high-level scaled (based on whether an LNG facility has been designated as a ''critical'' facility or not) cybersecurity program guidance within its Pipeline Security Guidelines.[171] DHS monitors compliance with the Pipeline Security Guidelines and Pipeline Security Directives through regulatory oversight of critical facilities and voluntary engagement with industry through CISA (under the auspices of its Pipeline Cybersecurity Initiative) and TSA (under the auspices of its Pipeline Corporate Security Review program). Recently-adopted USCG regulations at 33 CFR part 101, subpart F impose detailed cybersecurity planning and incident response program requirements on waterfront LNG facilities.[172] Although PHMSA plays an important role in ensuring the safety of LNG and other pipeline facilities in the event of a cybersecurity incident, PHMSA currently lacks the expertise and resources to oversee the performance of cybersecurity vulnerability assessments; performance of cybersecurity vulnerability assessments would also test the boundaries of PHMSA's statutory authority over LNG facility safety. PHMSA's proposed exclusion of NFPA 59A–2026 cybersecurity vulnerability assessment requirements also addresses concerns from multiple industry stakeholders about the significant compliance costs and minimal safety benefit that result from performing these assessments.[173] Nonetheless, PHMSA invites public comments on whether PHMSA should adopt specific cybersecurity requirements for LNG facilities, including whether those should include the relevant provisions within NFPA 59A–2026.

Second, PHMSA proposes a new deemed compliance requirement at § 193.413.[174] Specifically, paragraph (a) would—for operators of FERC-jurisdictional import and export facilities—deem compliance with PHMSA subpart D security requirements based on provision of documentation verifying compliance with detailed USCG Facility Security Assessment (33 CFR part 105, subpart C) and FSP (33 CFR part 105, subpart D) requirements. The USCG has regulatory authority over the physical security of waterfront LNG facilities, as well as authority to review and approve FSPs submitted by operators. USCG regulations at 33 CFR part 105 contains detailed physical security plan development, operation, training, and recordkeeping requirements for facilities similar to many of the requirements in chapter 16 of NFPA 59A–2026; FSPs adopted by operators in complying with those USCG requirements typically are not limited to the marine transfer area, but rather extend to the entirety of a facility. PHMSA expects operators employing this regulatory flexibility will maintain appropriate documentation confirming compliance with applicable USCG regulations as applied to the entirety of the LNG facility.

Similarly, § 193.413(b) would—for any LNG facility—deem compliance with part 193, subpart D's physical security-related program, procedural, maintenance, and training requirements based on documented compliance with DHS (including TSA) regulations, directives, and guidance implementing its physical security-related statutory authority under the Aviation and Transportation Security Act.[175] This regulatory flexibility would be available to any LNG facility—even those not designated as ''critical'' under the TSA Pipeline Security Guidelines; PHMSA expects operators employing this regulatory flexibility will maintain appropriate DHS or TSA correspondence (*e.g.,* issued in connection with Pipeline Corporate Security Review program activities, or other regulatory oversight activity) documenting compliance with applicable Pipeline Security Guidelines and Security Directives. This proposal is consistent with the terms of the 2020 Annex to the 2004 Memorandum of Understanding between DHS and DOT, which recognizes TSA as the lead agency for physical security of pipeline facilities, including LNG facilities.[176]

G. Subpart F—Risk-Based Operations and Maintenance

Congress's most recent reauthorization of PHMSA's pipeline safety program included several provisions directed toward improving Federal regulation of LNG facilities. Among the LNG facility-focused provisions of the PIPES Act of 2020 was a mandate at section 110 to provide ''large-scale [LNG] facilities'' a ''risk-based regulatory approach'' as an alternative to the traditional, prescriptive O&M requirements in part 193. Section 110 further directed that PHMSA's regulatory framework contain certain required content. Paragraph (c) lists a series of elements reflecting a PHA-based approach to addressing public safety risks of an LNG facility. Those elements track the comprehensive PHA requirements in OSHA's process safety management (PSM; 29 CFR 1910.119(e)) and Program 3 within U.S. Environmental Protection Agency's (EPA's) Risk Management Program (RMP; 40 CFR part 68, subpart B) regulations. Eligible operators opting for this risk-based alternative would, pursuant to paragraph (d), submit implementation plans to PHMSA for approval. The implementation plans would include a schedule for complying with PHMSA regulations codifying the section 110(c) requirements and an overview of how the requirements would be implemented at LNG facilities. Paragraph (b) of section 110 further directs that the alternative, risk-based O&M regime adopted by PHMSA must ''achieve a level of safety [at least] equivalent to the level of safety''

[170] PHMSA notes that USCG regulations at 33 CFR 105.305(c)(1)(v) governing waterfront LNG facilities list cybersecurity measures among the required topics in operator Facility Security Assessments.

[171] TSA, *Pipeline Security Guidelines,* at 22–26 (Apr. 2021).

[172] USCG, *Cybersecurity in the Marine Transportation System,* 90 FR 6298 (Jan. 17, 2025).

[173] *See, e.g.,* Williams Cos., *Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7612.

[174] The regulatory flexibilities provided by § 193.315 would also be available for FERC-certificated import/export facilities choosing the section 110 alternative pursuant to proposed part 193, subpart F. The regulatory flexibilities in § 193.315 would not, however, apply to design, installation, construction, and initial testing of physical security systems and equipment in NFPA 59A–2026 given the safety importance of those systems.

[175] Public Law 107–71.

[176] 2020 Annex. PHMSA acknowledges that under proposed § 193.315 some operators of FERC-authorized LNG import/export facilities may have an option to demonstrate compliance with subpart D's physical security-related program, procedural, maintenance, and training requirements by presenting documentation of compliance with either USCG regulations or DHS regulations, directives, and guidance.

provided by current part 193 regulations.

Multiple stakeholders have provided PHMSA with recommendations for implementing the section 110 requirements. Industry stakeholders have generally pointed to OSHA's PSM regime as a model for PHMSA to follow, praising the PSM regulations as a cost-effective, broadly-applicable, proven integration of PHA principles within the safety regulation of large industrial facilities.[177] In contrast, some pipeline safety advocates contend that any section 110 framework should supplement—rather than substitute for—prescriptive O&M requirements in part 193.[178] Those commenters also suggest that operator implementation plans should be comprehensive documents describing the specific alternative O&M measures operator will employ—and that PHMSA should review those plans rigorously and make them available for public comment before approval.

Consistent with the statutory mandate in section 110 of the PIPES Act of 2020, PHMSA proposes to adopt a new subpart F containing alternative, risk-based O&M requirements for FERC-authorized LNG facilities as a safety-equivalent alternative to most of the prescriptive requirements proposed for part 193, subpart E. The proposal—which complements safety-enhancing siting, design, installation, and construction requirements in existing part 193 or as proposed in this NPRM[179]—would leverage decades of industry experience employing facility-specific, PHA-based risk management approaches. The proposal would allow operators to focus their limited resources on managing risks from the most safety-consequential processes and equipment, rather than on complying with one-size-fits-all, prescriptive O&M requirements. The proposal would align PHMSA's regulations for LNG facilities with more mature and sophisticated regulatory regimes administered by EPA and OSHA for industrial facilities. PHMSA discusses its specific proposals below for implementing the section 110 mandate below and invites stakeholder comment.

G.1. Proven Safety Value of PHA-Based Approaches

Consistent with section 110 of the 2020 PIPES Act, PHMSA proposes to adopt a risk-based alternative to the traditional O&M requirements in part 193 for FERC-authorized LNG facilities. The core of the proposed framework is a PHA involving the identification and evaluation of hazards from potential releases of hazardous fluids employed in LNG facility processing activities, as well as the design and implementation of controls for managing the risks associated with those hazards.

PHA-based strategies first arose in the 1960s as a response to the limitations of traditional risk management approaches for increasingly complex industrial facilities. Traditional risk management approaches were generally reactive, *i.e.,* they focused on avoiding historical accidents, rather than on proactive identification and management of risks arising from the specific equipment and processes within a particular facility. That backward-looking orientation discouraged innovation and continual process improvement by diverting finite operator resources away from designing and employing robust mechanisms for incident prevention and toward compliance ''safe harbors'' to minimize regulatory liability. Historical risk management approaches (often implemented in checklist form) also tended to focus on isolated equipment or process-specific actions and personnel, rather than on employing a more holistic approach to identifying, evaluating, and mitigating the risks arising from interrelated processes equipment and systems. Regulatory frameworks informed by traditional risk management approaches tended toward top-down, highly prescriptive, one-size-fits-all requirements that proved to be either overly protective or inadequate—and rarely-fit-for-purpose.

Industry took the initial steps in developing a more sophisticated, holistic, alternative—process hazard analysis—in reference materials issued by dedicated consensus standard development organizations (*e.g.,* CCPS), and OSHA and EPA adopted PHA-based regulatory frameworks in subsequent proceedings.[180] OSHA established its PSM regulations to manage risks of releases from industrial facilities employing highly hazardous chemicals in 1991, and EPA established its RMP regulations directed toward minimizing offsite consequences of releases from certain point sources under the 1990 amendments to the Clean Air Act (Pub. L. 101–549) in 1996. Those PHA-based regulatory frameworks rested on the common-sense proposition that each operator—rather than a distant regulator—is often best-positioned to identify, evaluate, and design mitigation strategies for addressing facility-specific risks. OSHA and EPA gave affected operators greater freedom in the PSM and RMP regulations to design and to implement compliance programs than had been enjoyed under traditional regulatory frameworks.

PHA methodologies and regulatory frameworks have matured and been applied more broadly in subsequent years. Leading consensus industry standards, such as the CCPS's *Guidelines for Hazard Evaluation Procedures,* have been updated and expanded multiple times (from approximately 200 pages to over 500 pages in length).[181] The oil and gas industry has been active in this area, with leading trade associations issuing multiple recommended practices implementing PHA principles.[182]

PHA methodologies have also been applied to LNG facilities. FERC requires LNG project applicants to submit the results of preliminary PHA within the front-end engineering information submitted during the pre-filing reviews, and to submit complete PHAs as it reviews final designs.[183] In addition, NFPA 59A has since 2019 required PHAs in connection with its traditional (section 5.2.1) and QRA-based (section 19.5.1.2) siting requirements. PHMSA also understands that many FERC-authorized LNG facilities conduct PHAs in response to commercial concerns (*e.g.,* as a material condition of financing or sales, or to obtain insurance coverage). PHMSA itself has commissioned studies evaluating how a PHA-based framework could be

[177] *See, e.g.,* API, CLNG & INGAA, *Pipeline Safety Amendments to Large-Scale LNG Facilities,* Docket ID PHMSA–2019–0091–7623.

[178] PST, *Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7613, at 10–12.

[179] As explained earlier in the NPRM, siting design, installation, and construction requirements proposed in the new subparts B and C would apply only to new and altered LNG facilities due to statutory prohibitions on retroactive application of new requirements.

[180] A summary of historical industry and regulatory efforts in the development of process hazard analysis-based approaches may be found in the final rule adopting OSHA's PSM regime. *See* OSHA, *Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents,* 57 FR 6356–57 (Feb. 24, 1991). Responses to the limitations of traditional, prescriptive risk management approaches were not, however, limited to PHA-based approaches, as a diversity of other risk-informed approaches (*e.g.,* QRAs) arose in parallel.

[181] CCPS, *Guidelines for Hazard Evaluation Procedures* (3rd ed. 2008). PHMSA notes that CCPS is currently working on an expanded, fourth edition of its *Guidelines* scheduled to issue in 2026.

[182] *See, e.g.,* API, *RP 750—Recommended Practice on Management of Process Hazards* (1st ed. Jan. 1990) (API RP 750); API, *RP 1173—Safety Management Systems* (1st ed. July 2015).

[183] *See* FERC, *Guidance Manual for Environmental Report Preparation, Vol. II: Liquefied Natural Gas Project Resource Reports 11 & 13 Supplemental Guidance,* at apps. 13.A.5, 13.G.1 (Feb. 2017).

integrated within its part 193 regulations.[184]

Evidence indicates that PHA-based approaches have yielded significant safety benefits. For example, EPA data memorialized in a recent proposed rule revising its RMP regulations noted a long-term trend of decreasing releases from the nearly 12,400 RMP-jurisdictional facilities in the United States: a 45 percent drop in the annual number of reported accidents in each of 2014 (147 accidents) and 2023 (81 accidents). That positive safety trend also held for facilities most closely resembling LNG facilities, as the number of accidents for NAICS codes 324 (chemical facilities) and 325 (oil and gas facilities) decreased from 64 accidents in 2014 to only 37 accidents in 2023.[185] Similarly, accidents have been less severe, as EPA data between 2016–2020 and 2020–2023 evinces reduction in the severity of personal injuries and property damage.

Although less robust data is available for chemical facilities governed by OSHA's PSM regime, OSHA in 2016 noted that historical incident data from facilities subject to both RMP and PSM requirements demonstrated similar safety benefits: annual total incidents decreased by over 50 percent between 2000 (1,020) and 2010 (437); fatalities also decreased (from 14 to 10) in each of those years.[186] OSHA enforcement data evinces similar trends as industry has grown more familiar with the PSM framework, with potential violations having decreased over the lifetime of the PSM regime.[187]

PHMSA expects that adopting a PHA-based approach in part 193 will produce similar safety benefits. FERC-authorized LNG facilities are similar (*e.g.,* in size, hazardous fluids employed, and the number and complexity of equipment and processes) to many of the facilities governed by the PSM and RMP regimes. In addition, PHMSA expects a PHA-based approach to accommodate the rapid pace of technological and process innovation occurring at LNG facilities better. Integration of a PHA-based approach within part 193 would also reinforce existing initiatives promoting continuous safety improvement within the LNG industry. As noted above, many FERC-certificated LNG terminals already employ PHA-informed approaches in response to regulatory obligations or commercial incentives. Congress included within the statutory charter for PHMSA's National Center for Excellence in LNG Safety an expectation that the Center would function as a vehicle for continual safety improvement and innovation within the industry. In alignment with this mandate, PHMSA's proposed subpart F would integrate a PHA-based approach on a targeted basis. As discussed below, subpart F would be an alternative only to subpart E O&M requirements; other layers of defense in depth requirements for siting, design, installation, and construction would remain applicable.

PHMSA has extensive experience administering other risk-based programs. PHMSA has adopted integrity management (IM) regulations for gas transmission lines (part 192, subpart O), hazardous liquid pipelines (§ 195.452), and gas distribution lines (part 192, subpart P). These IM-based regulatory programs employ many of the same elements (risk identification and evaluation; deployment of mitigation measures; continuous process improvement) that appear in PHA-based regimes. Like PHA-based approaches, PHMSA's IM regulations give operators flexibility in identifying and evaluating hazards and in selecting appropriate mitigation measures. That flexibility, as discussed in section II.A.3 above, is subject to rigorous PHMSA oversight and enforcement.[188]

PHMSA's IM regulations have markedly improved pipeline safety. By way of example, a recent review of incident data on gas transmission lines since the 2003 introduction of PHMSA's part 192, subpart O IM requirements found significant reductions in per-mile frequency and severity of incidents on transmission lines subject to IM requirements.[189] For these reasons, PHMSA expects that the PHA-based alternative O&M requirements proposed for the new subpart F will improve public safety.

G.2. Section 193.501—Scope

PHMSA proposes a new § 193.501 establishing the scope of the PHA-based O&M requirements for FERC-jurisdictional LNG facilities. PHMSA acknowledges that multiple stakeholders who commented on the May 2025 ANPRM recommended that the proposed framework be applied more broadly.[190] However, Congress limited the statutory mandate in section 110 to ''large-scale'' LNG facilities. PHMSA also expects that FERC-jurisdictional LNG facilities are currently in the best position to comply with the PHA-based framework. As noted above, PHA-based approaches are already employed at many LNG facilities pursuant to FERC requirements or in response to commercial incentives. Application of the PHA-based O&M requirements at the more complex, larger scale FERC-jurisdictional LNG facilities should yield greater cost savings as compared to their smaller (*e.g.,* peak shaving) counterparts. Further, many smaller-scale LNG facilities that could benefit from a PHA-based approach will have access to enhanced regulatory flexibilities from the proposed adoption of chapter 17 of NFPA 59A–2026 at subpart E. Small-scale LNG facility operators also retain the ability to apply for a waiver of the subpart E O&M requirements pursuant to a special permit issued under § 190.341. PHMSA will nevertheless evaluate any comments received on the cost savings and safety impact of extending subpart F to other LNG facilities.

PHMSA also proposes to except certain subpart E O&M requirements from subpart F.[191] Specifically, the NPRM in paragraphs (a)–(b) excepts subpart E requirements governing physical security and emergency procedures focused on coordination of

[184] IoMosaic, Report No. 23215–C, *Final Technical Report: Methodologies for Managing Process Safety Risk Using Hazard and Operability (HAZOP) and Layers of Protection Analysis (LOPA) for Liquefied Natural Gas (LNG) Facilities* (June 2025).

[185] EPA, *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Common Sense Approach to Chemical Accident Prevention,* 91 FR 8970, 8976 (proposed Feb. 24, 2026); EPA, *Regulatory Impact Analysis,* Docket ID EPA–HQ–OLEM–2025–0313–0058, at Exhibits 6–3 through 6–5 (Feb. 24, 2026).

[186] OSHA, *Process Safety Management SER Background Document,* Docket ID OSHA–2013–0020–0107, at 8 (2016).

[187] *See* OSHA Enforcement Data, available at: *https://enforcedata.dol.gov/views/data_summary.php* (last visited Jan. 26, 2026).

[188] *See generally* PHMSA, *Enforcement Activity,* available at: *https://primis.phmsa.dot.gov/enforcement-data/* (last visited Jan. 28, 2026). The two largest proposed penalties in PHMSA's history were both in connection with violations of PHMSA's part 195 integrity management requirements. *See* PHMSA, Press Release, *Trump's Transportation Secretary Sean P. Duffy Announces Record Fine Against Pipeline Operator for Violating Pipeline Safety Regulations* (Jan. 6, 2026) (Panther Operating Company); PHMSA, Press Release, *PHMSA Announces New Safety Measures to Protect Americans From Carbon Dioxide Pipeline Failures After Satartia, MS Leak* (May 26, 2022) (Denbury Gulf Coast Pipeline).

[189] Mark Hereth, Jason Skow & Martin Di Blasi, *Is Pipeline Safety Improving?, ASME's Proceedings of 2024 15th Intl. Pipeline Conference Volume 1,* at 2–3 (Sep. 2024).

[190] *See, e.g.,* Joint Trade Associations, *Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7611, at 13, 32; API, CLNG, INGAA & NGA, *Supplemental Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7625, at 15 (Feb. 28, 2026). PHMSA will consider stakeholder comments calling for amendment of § 193.501 to extend subpart F to additional LNG facilities.

[191] PHMSA also solicits stakeholder suggestions as to other subpart E requirements (including incorporated NFPA 59A–2026 provisions) meriting exception from the scope of the substitution pursuant to subpart F.

emergency awareness and response actions by facility personnel and the public (as opposed to emergency response actions in operating process equipment, which would be subject to subpart F). PHMSA notes that physical security requirements are beyond the scope of the section 110 mandate, while emergency awareness and response actions are addressed by other provisions of NFPA 59A–2026 proposed for incorporation by reference in subpart E and may be subject to additional requirements and FERC approval under the NGA.

G.3. Section 193.503—Program Contents

PHMSA proposes to establish the contents of the PHA-based risk management program at a new § 193.503.[192] Because the congressional mandate at section 110 of the PIPES Act of 2020 contains language resembling the programmatic requirements in OSHA's PSM regulations, the proposed text of § 193.503 borrows heavily from the 29 CFR 1910.119 regulatory text. PHMSA has, however, omitted certain PSM elements that are either addressed in other part 193 regulations (*e.g.,* failure investigation requirements at § 193.15; management of change requirements at quality assurance-related requirements in subpart C) or that should be left to operator discretion (specifically, trade secret protection). PHMSA has also throughout adapted the OSHA regulatory text (*e.g.,* substitution of OSHA's references to ''employer'' with references to ''operator'') for consistency with the text of the section 110 mandate and part 193 regulations.

PHMSA expects that adapting the familiar OSHA regulatory language will facilitate operator implementation. The PSM and part 193 regulatory framework share a common purpose and are directed toward minimizing the frequency and magnitude of consequences from process activities. PHMSA expects that pertinent guidance issued by OSHA and EPA in administering their PHA-based regimes may be informative—though not necessarily dispositive—of PHMSA's expectation's regarding acceptable subpart F compliance strategies.[193] PHMSA also notes that it has commissioned research projects that can serve as resources for operators in developing and integrating PHA-based O&M programs.[194]

PHMSA clarifies below certain issues regarding implementation of the new subpart F. PHMSA solicits stakeholder feedback on these and other potential implementation concerns meriting addressing in a final rule.

Scope of Substitution for Subpart E's Prescriptive Operations and Maintenance Requirements

Operators electing the new subpart F must do so as an alternative to the entirety of the prescriptive subpart E O&M requirements, subject to the exceptions identified in § 193.501(a).[195] PHMSA understands this expectation will facilitate regulatory oversight by reducing confusion resulting from operators attempting to employ a hybrid approach asserting compliance with both subparts E and F simultaneously.[196] PHMSA notes, however, that operators may incorporate prescriptive requirements borrowed from subpart E into their subpart F compliance strategies.

Accidental Releases Targeted by PHAs

PHMSA expects that subpart F-compliant PHAs will be directed toward identifying, evaluating, and mitigating accidental releases that could result in incidents as that term is defined in part 191. Unlike the PSM and RMP regulations directed toward preventing risks from releases of ''highly hazardous chemicals'' (OSHA) or ''extremely hazardous substances'' (EPA) when present above certain quantities, the statutory language in section 110(c) couches PHA's identification, evaluation, and management of accidental releases in terms of ''incidents.'' Congress has authorized PHMSA to define that term by regulation, and § 191.3 strikes a balance between the compliance burdens and safety benefit associated with incident reporting by grounding minimum reporting thresholds in significant public safety (death or personal injury requiring hospitalization) and property damage consequences. PHMSA similarly expects that PHAs conducted pursuant to subpart F will be focused not on any accidental release of any hazardous fluid, but on those that could reasonably be expected to result in a reportable incident.

Mandatory Incorporation by Reference of CCPS Guidelines for Hazard Evaluation Procedures

PHMSA proposes at § 193.503(b) the incorporation by reference of the third edition of the CCPS *Guidelines* to require operators employ that consensus industry standard in designing and implementing their subpart F programs. Operators may supplement the PHA-based framework within the *Guidelines* with other pertinent PHA-based standards (*e.g.,* API RP 750) as appropriate for their facilities.

PHMSA acknowledges that OSHA's PSM regulations do not prescribe use of any particular consensus industry standards. Rather, OSHA identifies in Appendix D to 29 CFR 1910.119 several standards—including the CCPS *Guidelines* and API 750—that can inform the design and implementation of operator compliance strategies. PHMSA expects that mandatory reference to the CCPS *Guidelines* will improve regulatory oversight and operator compliance. The CCPS *Guidelines* are the authoritative industry reference on the performance of PHAs; the high-level conceptual framework therein sets forth proven guardrails for establishment of effective programs without sacrificing the flexibility characteristic of PHA-based approaches. PHMSA further notes that the CCPS *Guidelines* are frequently referenced in other consensus industry standards employing PHA-based frameworks and are often identified in operator descriptions of PHA-based approaches within their applications to FERC. That said, PHMSA solicits stakeholder feedback on whether the CCPS *Guidelines* (or the forthcoming fourth edition of that standard) should be incorporated within part 193 regulations in their entirety, or whether certain portions should be excluded from that incorporation by reference.

Recognized and Generally Accepted Good Engineering Principles (RAGAGEP)

PHMSA proposes at § 193.503(b)(3) and (h)(4) that operator programs reflect O&M practices consistent with recognized and generally accepted good engineering practices (RAGAGEP). The RAGAGEP standard—which is

[192] PHMSA understands that subpart F compliance could be on a facility-specific basis should an operator have multiple facilities within the same LNG plant.

[193] PHMSA, however, is not bound by other agencies' interpretation of their distinguishable statutory authority and purposes. PHMSA consequently does not propose to adopt those other agencies' guidance (including, but not limited to, Appendices B–D to 29 CFR 1910.119) wholesale.

[194] IoMosaic, Report No. 23215–C, *Final Technical Report: Methodologies for Managing Process Safety Risk Using Hazard and Operability (HAZOP) and Layers of Protection Analysis (LOPA) for Liquefied Natural Gas (LNG) Facilities* (June 2025).

[195] Even as PHA-based approaches can suggest specific siting and design changes as risk mitigation measures, such measures are beyond the scope of the section 110 mandate and PHMSA's proposals herein.

[196] That said, PHMSA acknowledges that implementation of a PHA-based approach cannot happen overnight; PHMSA therefore proposes at section § 193.505 below that operators identify in their implementation plans process-specific timelines for transition from a subpart E to a subpart F framework.

integrated within both OSHA's PSM and the EPA RMP regimes—is the benchmark for determining adequacy of operators' continual process improvement efforts: operators must ensure their practices keep pace with the evolution of technology, best practices, and lessons learned. Similar performance-based concepts appear in in the current part 193 regulations for maintenance practices (''generally accepted engineering practices'' at § 193.2605(a)) as well as in FERC guidance (''generally accepted good engineering practices'').[197]

PHMSA expects that operators will apply the RAGAGEP concept consistent with OSHA's elaboration of the term set forth in 2016 guidance.[198] Because RAGAGEP is fundamentally a performance-based standard, PHMSA proposes to define that term. PHMSA's proposal is consistent with recommendations that industry stakeholders submitted in response to PHMSA's May 2025 ANPRM and during the October 2025 public meeting. These industry stakeholders praised OSHA's approach as striking an appropriate balance between the burden on operators in evaluating potential bases of RAGAGEP within their continual process improvement efforts and the potential safety benefits from any updates.[199]

PHMSA's proposal preserves flexibility for operators to innovate in selecting operations and maintenance practices most suitable for the equipment and processes in their facilities. Although industry stakeholders identified in their ANPRM comments multiple industry standards (including NFPA 59A) that could be informative of RAGAGEP, PHMSA's proposed approach neither restricts RAGAGEP to those resources nor requires their use.[200] Similarly, PHMSA's understanding of RAGAGEP does not oblige operators to review and conform with each of the frequent updates to the broad universe of potentially pertinent consensus industry standards [201]—a task that often will not offer safety benefits commensurate with the resulting compliance burdens. Nor does it prohibit operator internal processes from informing RAGAGEP, as other bases of RAGAGEP (*e.g.,* consensus industry standards) typically consist of compilations of higher-level descriptions of facility-specific practices.

Lastly, PHMSA envisions that the Federal Government can play a valuable role in supporting operators' efforts in aligning their O&M practices with RAGAGEP. Specifically, PHMSA's National Center for Excellence in LNG Safety is intended to be a forum for collaboration and information-sharing between Federal, State, and industry representatives to ensure continual improvement in LNG facility safety.[202] PHMSA envisions the Center will serve as a repository of information on operational best practices for LNG facilities, as well as a vehicle for proactively identifying and directing safety research activities and distributing the results thereof to stakeholders.[203]

PHMSA Review of Operator Subpart F Compliance Programs

PHMSA does not propose to require advance notification or review of subpart F-compliance O&M programs (or associated documentation, including any the results of any PHAs).[204] Section 110 does not require such a review. Nor is it required by OSHA in connection with the establishment of its PSM framework, or by PHMSA under the IM regulations for gas and hazardous liquid pipelines.

As with other regulatory programs, PHMSA will review operator compliance with the subpart F requirements in conducting inspection, investigation, and enforcement activities. This approach has proven track record of success and will ensure the appropriate use of PHMSA's limited resources. Should PHMSA determine in connection with its oversight activity that an operator's subpart F program raises a safety concern, PHMSA has (as discussed in section II.A.3.a above) broad statutory authority to intervene to protect public safety.

Audits of Operator Compliance Programs

PHMSA proposes at § 193.503(k) to adopt language in OSHA's PSM regulations requiring operators electing subpart F to audit their compliance programs once every three years. Although this requirement does not appear in the section 110 mandate, PHMSA notes that both OSHA and EPA have highlighted periodic auditing as a critical mechanism ensuring continual improvement of PSM and RMP compliance programs.[205] NFPA 59A–2026 at section 18.2.2(8) also requires periodic auditing of O&M procedures for similar reasons. Regularly scheduled audits also backstop operator performance of amended or new PHAs in connection with implementation of management of change requirements proposed within paragraph (§ 193.503(j)).

PHMSA notes that such audits are not intended to require the re-performance of PHAs. Nor does PHMSA propose that such audits must be conducted by a third party as currently required by EPA's RMP regulations (at 40 CFR 68.87) and has been suggested by OSHA for incorporation within its PSM regulations.[206] PHMSA agrees (based on its review of the administrative record associated with EPA and OSHA's consideration of such requirements) with EPA's preliminary assessment and the position of many industry stakeholders that any potential, unique incremental safety benefits from third party audits are outweighed by the outsized compliance costs and implementation challenges.[207]

[197] FERC, *Guidance Manual for Environmental Report Preparation, Vol. II: Liquefied Natural Gas Project Resource Reports 11 & 13 Supplemental Guidance,* at app. 13.D.

[198] OSHA, *RAGAGEP in Process Safety Management Enforcement* (May 11, 2016) (2016 OSHA Interpretation), available at: *https://www.osha.gov/laws-regs/standardinterpretations/2016-05-11.*

[199] *See, e.g.,* Joint Trade Associations, *Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7611, at 28, 35; Nielson (NextDecade), *Transcript of Oct. 2025 Public Meeting,* Docket ID PHMSA–2019–0091–7624, at 156:3–11 (Oct. 25, 2025).

[200] *See, e.g.,* Joint Trade Associations, *Comments on the ANPRM,* Docket ID PHMSA–2019–0091–7611, at 11, 31–33, 36, 43–44.

[201] *See* Andrew Kohout (FERC), *Transcript of Oct. 2025 Public Meeting,* Docket ID PHMSA–2019–0091–7624, at 153 (Oct. 25, 2025) (noting that FERC has compiled nearly 2600 unique industry standards—each of which are continually updated—listed in LNG facility applications). PHMSA similarly does not understand the PHA validation (§ 193.503(c)) or audit periodicities (§ 193.503(k)) proposed elsewhere in subpart F to dictate the frequency of operators' review, evaluation, and incorporation of updates to consensus industry standards within their operations and maintenance practices.

[202] Congress included within the statutory charter for PHMSA's National Center for Excellence in LNG Safety an expectation that it would function as a vehicle for continual safety improvement and innovation within the industry. *See* Public Law 112–60 (at section 111(d)).

[203] *See Best Practices Webinar Series Presented by the National Center of Excellence for Liquefied Natural Gas Safety,* 91 FR 3301 (Jan. 26, 2026).

[204] PHMSA takes no position, however, regarding the need for operators of previously authorized LNG facilities to obtain advance endorsement of their subpart F compliance programs from other FERC or other regulatory authorities.

[205] OSHA, *Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents,* 57 FR 6356, 6396 (Feb. 24, 1991); EPA, *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Common Sense Approach to Chemical Accident Prevention,* 91 FR 8970, 8987 (proposed Feb. 24, 2026).

[206] *See* OSHA, *Process Safety Management and Prevention of Major Chemical Accidents,* 78 FR 73756, 73762 (Dec. 9, 2013).

[207] *See* Docket No. OSHA–2013–0020; EPA, *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act;*

Continued

Relationship to PHAs Conducted in Complying With the Requirements of Subpart B or Other Regulatory Authorities, or for Other Reasons

PHMSA acknowledges that many operators may have or will conduct PHAs in connection with its own subpart B siting requirements, the requirements of other Federal agencies (*e.g.,* as part of a FERC application), or for commercial reasons. Provided those PHAs comply with the elements of § 193.503 and reflect a complete, accurate understanding of the hazardous fluids and processes of an LNG facility, they can be employed as the initial PHA required by paragraph § 193.503(c). PHMSA understands there would be little safety value from forcing operators to re-perform PHAs that are entirely compliant with proposed subpart F requirements.

G.4. Section 193.505—Implementation Plans

PHMSA proposes at § 193.505 requirements governing operator plans for implementing Subpart F programs, including: submission procedures (or mechanics); issues related to PHMSA review; and required minimum implementation plan content.

Submission Mechanics

PHMSA in paragraph (a) proposes that operators electing to use subpart F must submit their implementation plans for review pursuant to 49 CFR 190.9. PHMSA does not propose to publish receipt of, or its decision on, those implementation plans; nor does PHMSA propose to make the content of those implementation plans available for public review or comment. Although PHMSA acknowledges that public safety advocates have called for such procedures, neither the section 110 statutory text nor legislative history support such procedural requirements. PHMSA also understands there would be little value to the public from public notification and disclosures. O&M procedures are typically confidential business information that is not disclosed to the public; PHMSA for this reason does not require operators to release their IM plans (or for that matter, their subpart F programs) for public review and comment. And, as discussed further below on PHMSA's proposed subparagraph (c), section 110 prescribes only minimal content for implementation plans—and that which it prescribes is focused more on implementation timelines than detailed descriptions of the content of operator compliance O&M procedures of the sort that public safety advocates envision would be within implementation plans.

Lastly, PHMSA proposes that operators must forward copies to each of the Federal regulatory authorities (specifically, FERC, USCG, and TSA) with oversight responsibilities regarding operator O&M efforts. Such filings should be made in accordance with any applicable filing requirements with those Federal agencies. Although PHMSA's review of operator implementation plans will not necessarily require endorsement of those other agencies, PHMSA reserves discretion to consult with them on elements of subpart F implementation plans on which there is shared regulatory authority.

PHMSA Review

PHMSA also proposes at paragraph (b) that its review of operator implementation plans will be time-limited; PHMSA shall issue an approval or denial no more than 30 days from receipt of an operator's initial submission to PHMSA—with no action by PHMSA automatically deemed denial. PHMSA also explicitly disclaims predicating the 30-day deadline on PHMSA's discretionary determination that an operator has made a ''complete'' submission. Stakeholders frequently complain that such discretion renders regulatory timelines elsewhere in PHMSA regulations meaningless and encourages arbitrary demands for information not explicitly required by regulation or authorized pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).[208] PHMSA notes that should PHMSA determine an operator must submit additional information requiring additional time to review, the operator can resubmit its implementation plan with that additional information to ''restart'' the 30 day deadline—or PHMSA may deny the implementation plan (and the operator may resubmit thereafter). PHMSA expects this approach will also incent operators to engage PHMSA in advance of formal submission of implementation plans so that PHMSA can assist them in developing a submission plan with adequate information for timely and robust review.

Required Content of Implementation Plans

PHMSA proposes at paragraph (c) the prescribed minimum content for operator implementation plans. As discussed earlier, the statutory text section 110 mandate specifies only limited required content for those plans—and the statute focused that content on providing merely an ''overview'' and implementation timelines for transitioning from a prescriptive O&M-based framework to a risk-based, subpart F-compliant program. This understanding of the statutory text reflects the practical reality that conducting PHAs and designing and implementing the program procedures, management controls, and training within a subpart F program necessarily will involve significant up-front work effort and time—indeed, implementation timelines were a topic of extensive negotiation with regulated entities in establishing EPA and OSHA's analogous risk-informed regulatory regimes.[209]

PHMSA therefore proposes that operator implementation plans identify—on a process, system, or organizational-specific basis—intermediate and final milestones specifying particular work streams and dates certain within an operator's transition to subpart F-compliant O&M programs. PHMSA believes this approach strikes an appropriate balance between administrative and documentation burdens on operators (*e.g.,* from designing the conceptual framework for implementation and selecting pertinent milestones and timelines) and adequate certainty for PHMSA and other regulators regarding whether particular processes, systems or organizations are subject to subpart E or subpart F requirements at any particular moment in time. Notably, PHMSA will not expect operators will have performed a PHA before or in connection with the development of their implementation plans; rather, the performance of a PHA could be a milestone identified in those plans consistent with other Federal agency requirements.

Common Sense Approach to Chemical Accident Prevention, 91 FR 8970, 8987 (proposed Feb. 24, 2026).

[208] *See, e.g.,* INGAA, *Comments in Response to 'Rationalize Special Permit Conditions' Notice of Proposed Rulemaking,* Docket ID PHMSA–2025–0135–008, at 2–3 (Sep. 12, 2025).

[209] *See, e.g.,* EPA, *Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),* 61 FR 31668, 31672–73 (June 20, 1996) (discussing stakeholder concerns regarding implementation timelines for both the EPA RMP and OSHA PSM regimes).

V. Regulatory Analyses and Notices

A. Statutory Authority

Pipeline Safety Laws

This proposed rule is published under the authority of the Federal Pipeline Safety Statutes (49 U.S.C. 60101 *et seq.*). Section 60103 authorizes the Secretary of Transportation to issue regulations governing the location, design, installation, construction, inspection, testing, operation, and maintenance of LNG facilities.

PHMSA is proposing to revise the ''Authority'' entry for 49 CFR part 193 to include 30 U.S.C. 185(w)(3), a provision of the Mineral Leasing Act (MLA). That statute provides that ''[p]eriodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.'' PHMSA has traditionally complied with § 185(w)(3) through the issuance of the Pipeline Safety Regulations, which require annual examinations and prompt reporting for all or most of the pipelines they cover. Though there are currently no LNG facilities located on Federal land, the exclusion zones from certain existing and proposed LNG facilities may extend onto Federal land. In those cases, PHMSA requires the operator to take mitigation measures to show compliance with part 193. Moreover, PHMSA requires LNG operators to file annual, incident, and safety reports. PHMSA is making this change to clarify its long-standing position that the agency complies with the MLA through the issuance of the Pipeline Safety Regulations. The Secretary has delegated the above authorities to the PHMSA Administrator pursuant to 49 CFR 1.97(a).

Statutory Factors

The Pipeline Safety Laws specify certain mandatory considerations when adopting safety standards for gas pipeline facilities and LNG facilities. Section 60102(b) requires that safety standards for any gas pipeline facilities be ''practicable'' and ''designed to meet the need for gas pipeline safety . . . and protecting the environment'' based on consideration of its appropriateness for the type of transportation, reasonableness, and a risk assessment of the costs and benefits. Section 60103 supplies additional, LNG facility-specific considerations for requirements pertaining to each of siting (§ 60103(a)); design, installation, construction, inspection, and testing (§ 60103(b)); and operations and maintenance (§ 60103(d)). In addition, any proposed standard must, pursuant to 49 U.S.C. 60115(c), be reviewed by the GPAC for technical feasibility, reasonableness, cost-effectiveness, and practicability.

PHMSA has preliminarily determined that, notwithstanding the uncertainties and data limitations discussed in the PRIA, each of the proposals in the NPRM would be justified by either its corresponding compliance costs savings, enhanced regulatory flexibility, or improved public safety benefits. In reaching that preliminary determination, PHMSA has considered each of the pertinent statutory factors in proposing the requirements herein governing siting, design/installation/construction/inspection and testing, and operations and maintenance at LNG facilities. The core of the NPRM consists of incorporating by reference the (most recent) 2026 edition of NFPA 59A, an authoritative standard governing the safety of LNG facilities reflecting extensive technical deliberations among a broad consensus of Federal and State regulators and representatives across the spectrum of LNG industry stakeholders. Other NPRM proposals not derived from NFPA 59A either preserve current, longstanding part 193 requirements or enhance regulatory flexibility benefiting operators without adversely affecting safety. The origins of the NPRM's proposals consequently evince their appropriateness, technical feasibility, reasonableness, cost-effectiveness, and practicability as to the LNG facilities each such requirement would govern. And, as discussed at length in section IV above, PHMSA expects adoption of the proposals in the NPRM will improve public safety—and by extension, enhance protection of the environment.

B. Statutory Requirement and Executive Order 12866, and DOT Policies and Procedures for Rulemakings

The Pipeline Safety Act (49 U.S.C. 60102(b)) requires that PHMSA prepare a risk assessment that ''identifies the costs and benefits associated with a proposed regulatory change.'' E.O. 12866 (*Regulatory Planning and Review,* 58 FR 61735 (Oct. 4, 1993)) as implemented by DOT's rulemaking policies and regulations at 49 CFR part 5, subpart B, requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' In arriving at those conclusions, E.O. 12866 requires that agencies should consider ''both quantifiable measures . . . and qualitative measures of costs and benefits that are difficult to quantify'' and ''maximize net benefits . . . unless a statute requires another regulatory approach.'' Moreover, E.O. 12866 requires that ''agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.'' 49 CFR part 5, subpart B directs that PHMSA and other Operating Administrations must generally choose the ''least costly regulatory alternative that achieves the relevant objectives'' unless required by law or compelling safety need. Furthermore, 49 CFR part 5, subpart B specifies that regulations should generally ''not be issued unless their benefits are expected to exceed their costs'' except where required by law or compelling safety need.

E.O. 12866 and 49 CFR part 5, subpart B also require that PHMSA submit ''significant regulatory actions'' to the Office of Information and Regulatory Affairs (OIRA) within the Executive Office of the President's Office of Management and Budget (OMB) for review. OIRA has determined that this NPRM is a significant regulatory action pursuant to section 3(f) of E.O. 12866. Accordingly, this rule has been reviewed by OMB.

As explained in greater detail in the PRIA (available in the rulemaking docket), some elements of this NPRM may be considered deregulatory actions under E.O. 14192 and OMB guidance, including M–25–20.[210] PHMSA expects those elements will result in significant compliance cost savings by reducing regulatory burdens and regulatory uncertainty for operators of pertinent LNG facilities. PHMSA expects that some of those cost savings will also result in reduced costs for the public to whom certain LNG facility operators (*e.g.,* local gas distribution companies operating peak shaving facilities) may transfer a portion of their compliance costs. Those reduced costs to LNG facility operators and the public are consistent with E.O. 14192, which establishes a Federal policy of alleviating ''unnecessary regulatory burdens'' by reducing compliance costs and reducing the risks from non-compliance with burdensome regulations. PHMSA has provided in the PRIA quantifications of avoided compliance costs where possible. In addition, PHMSA expects the proposals within this NPRM will have non-

[210] *See* OMB, M–25–20, *Guidance Implementing Section 3 of E.O. 14192* (Mar. 26, 2025), available at: *https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-20-Guidance-Implementing-Section-3-of-Executive-Order-14192-Titled-Unleashing-Prosperity-Through-Deregulation.pdf.*

quantified benefits to public safety and the environment arising from the enhanced safety requirements within the consensus industry standards PHMSA has proposed for incorporation into its part 193 regulations. Based on the detailed discussion of the costs and benefits of the NPRM within the PRIA, PHMSA has preliminarily determined that the benefits of each of the NPRM elements justify any associated costs notwithstanding the uncertainties identified. For a full breakdown of the regulatory and deregulatory aspects of the proposed rule, see the incremental impacts tables available in section 3 of the PRIA.

E.O. 12866 and DOT Order 2100.6B 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.*). PHMSA seeks comment on its proposed revisions to the Pipeline Safety Regulations and the cost and benefit analyses in the PRIA, as well as any information that could assist in quantifying the costs and benefits of this rulemaking.

C. Energy-Related Executive Orders 13211, 14154, and 14156

The President has declared in E.O. 14156, a national emergency to address inadequate U.S. energy development production, transportation, refining, and generation capacity. Similarly, E.O. 14154, asserts a Federal policy to unleash American energy by ensuing access to abundant supplies of reliable, affordable energy from, *inter alia,* the removal of ''undue burden[s]'' on the identification, development, or use of domestic energy resources such as natural gas. PHMSA preliminarily finds the proposals in this NPRM are consistent with each of E.O. 14156 and E.O. 14154. PHMSA's proposed incorporation of updated consensus industry standards will enhance regulatory certainty for LNG facility operators who currently must navigate PHMSA regulations that are nearly two decades old. PHMSA's proposals would also increase flexibility in connection with the siting of new and modified peak shavers and other LNG facilities that will in turn increase natural gas transportation capacity providing abundant, reliable, affordable natural gas for residential, commercial, industrial, and export demand.

However, PHMSA has preliminarily determined that this NPRM is not a ''significant energy action'' under E.O. 13211 (*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,* 66 FR 28355 (May 22, 2001)), which requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' Although this NPRM is a significant action under E.O. 12866, it will not have a significant adverse effect on supply, distribution, or energy use, as further discussed in the PRIA.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the impact of their rules on small entities, to analyze alternatives that minimize those impacts, and to make their analyses available for public comment. Regulatory flexibility analysis is not required, however, where the agency head certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. DOT's implementing guidance—established consistent with E.O. 13272 (*Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (Aug. 16, 2002))—is available online.[211]

This NPRM was developed in accordance with E.O. 13272 and DOT implementing guidance. PHMSA has considered the anticipated impact the proposed rule would have and certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities. The PRIA estimates that fewer than a third of the entities affected by this rulemaking are ''small entities'' as defined by the Regulatory Flexibility Act. PHMSA expects, moreover, that the principal economic impact on those entities will be beneficial. As explained in greater length in the PRIA, many of the NPRM's proposed regulatory amendments are expected to yield cost savings for PHMSA-jurisdictional LNG facilities—including those considered ''small entities'' under the Regulatory Flexibility Act. Further, many of the NPRM's proposed requirements imposing compliance costs on operators are limited to larger LNG facilities of the sort not typically operated by small entities; in fact, NFPA 59A–2026 excepts operators of mobile and temporary LNG facilities (chapter 14) and permanent, small-scale LNG facilities (chapter 17) satisfying certain eligibility criteria from many of new requirements that would otherwise apply to PHMSA-jurisdictional LNG facilities. The PRIA consequently predicts that all small entities will see cost savings; a minority of those entities will experience cost savings exceeding one percent of their annual revenues, and fewer than a quarter will experience cost savings exceeding three percent of their annual revenues.

PHMSA requests comments on its certification and the discussion of the Regulatory Flexibility Act in the PRIA.

E. Executive Order 13132 (Federalism)

PHMSA analyzed this NPRM in accordance with the principles and criteria contained in E.O. 13132 (*Federalism,* 64 FR 43255 (Aug. 10, 1999)) and the Presidential Memorandum (*Preemption,* 74 FR 24693 (May 22, 2009)). E.O. 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.''

Although the proposals in this NPRM may (if adopted) operate to preempt some State requirements, they 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. Section 60104(c) of the Pipeline Safety Laws prohibits certain State safety regulation of interstate pipelines. Under the Pipeline Safety Laws, States that have submitted a current certification under section 60105(a) can augment Federal pipeline safety requirements for intrastate pipelines regulated by PHMSA but may not approve safety requirements less stringent than those required by Federal law. A State may also regulate an intrastate pipeline facility that PHMSA does not regulate. This NPRM pertains to LNG facilities and the preemptive effect of the regulatory amendments in this final rule is limited to the minimum level necessary to achieve the objectives of the Pipeline Safety Laws. Therefore, the consultation and funding requirements of E.O. 13132 do not apply.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act (UMRA, 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

[211] *https://www.transportation.gov/regulations/rulemaking-requirements-concerning-small-entities.*

of $100 million or more in 1996 dollars ($203 million in 2024 dollars) in any given year, the agency must prepare, among other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the Federal mandate.

This NPRM does not impose unfunded mandates under UMRA. As shown in the PRIA located in the rulemaking docket, the proposed rule does not result in costs of $100 million or more in 1996 dollars per year for either State, local, or Tribal governments, or to the private sector.

G. National Environmental Policy Act (NEPA)

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) requires Federal agencies to prepare a detailed statement on major Federal actions significantly affecting the quality of the human environment. DOT Order 5610.1D, *Procedures for Considering Environmental Impacts* (July 1, 2025) establishes departmental procedures for evaluating environmental impacts under NEPA.

PHMSA has completed a draft environmental impact statement. A copy of the draft environmental impact statement is available in the docket. PHMSA invites comment on the potential environmental impacts of this proposed rule.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

PHMSA analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 13175 (*Consultation and Coordination with Indian Tribal Governments,* 65 FR 67249 (Nov. 9, 2000)) and DOT Order 5301.1A, *Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes* (Aug. 10, 2023). E.O. 13175 requires agencies to ensure meaningful and timely input from Tribal government representatives when 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 that it will significantly or uniquely affect Tribal communities or Indian 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 affect Tribal communities significantly or uniquely, impose substantial compliance costs on Tribal governments, or mandate Tribal action. Further, since PHMSA expects the NPRM will improve safety and reduce environmental risks associated with LNG facilities and pipelines, PHMSA expects the NPRM will not entail disproportionately high adverse risks for Tribal communities. Therefore, the funding and consultation requirements of E.O. 13175 and DOT Order 5301.1A do not apply.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) directs Federal agencies to use voluntary consensus standards and design specifications instead of government-developed voluntary technical standards when appropriate. Voluntary consensus standards are technical standards developed or adopted by domestic and international standards development organizations (SDOs). OMB Circular A–119, *Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,* sets the policy for Federal use and development of voluntary consensus standards.

The legal effect of incorporation by reference (IBR) is that the material is treated as if it was published in full in the **Federal Register** and the CFR. Therefore, like any other rule issued in the **Federal Register**, the IBR standard has the force and effect of law. However, if an SDO publishes a new edition of a standard, the specific edition of the standard that was incorporated by reference remains as the standard carrying the force of law. Further, if a provision of a standard incorporated by reference conflicts with a regulation, the regulation takes precedence, unless expressly provided otherwise in a regulation. Congress authorized incorporation by reference to reduce the volume of material published in the **Federal Register** and the CFR (*see* 5 U.S.C. 552(a) and 1 CFR part 51) and granted authority to the Director of the Federal Register to determine whether a proposed IBR serves the public interest. Unless expressly provided otherwise in a regulation, if a provision of a standard incorporated by reference conflicts with a regulation, the regulation takes precedence.

New or updated pipeline standards often consider new technologies, materials, management practices, and other innovations that improve the safety and operations of pipelines and pipeline facilities. Because the Pipeline Safety Regulations involve a great deal of technical subject matter, PHMSA has incorporated by reference over 80 standards and specifications into the regulations. PHMSA regularly reviews newer editions of currently referenced consensus standards and issues regulations to incorporate by reference updated standards that are consistent with the intent of the Pipeline Safety Regulations. This ensures that the Pipeline Safety Regulations incorporate the latest safety innovations. The lists of publications that PHMSA has incorporated by reference are found in §§ 192.7, 193.2013, and 195.3. The proposed revisions that this NPRM would make to the list of publications referenced in part 193 are found in § 193.9.

PHMSA employees participate in 25 domestic U.S. SDOs, including the NFPA, that address the design, construction, maintenance, inspection, operation, and repair of pipeline facilities. These subject matter experts represent the agency and participate in discussions and technical debates, register opinions, and vote in accordance with the procedures of the standards body at each stage of the standards development process (unless prohibited from doing so by law). PHMSA participates in this process to ensure the agency's safety and environmental priorities are considered and to avoid the need to develop separate, government-unique standards. PHMSA's participation does not, however, imply that the agency agrees with or endorses all decisions reached by such organizations. PHMSA has the responsibility to ensure the safe operation of pipeline systems and adopts only those portions of consensus standards that adequately protect public safety and the environment.

Availability of Materials to Interested Parties

PHMSA currently incorporates by reference into the Pipeline Safety Regulations all or parts of more than 80 standards and specifications developed and published by SDOs. SDOs update and revise their published standards every two to five years to reflect modern technology and best technical practices. ASTM International (ASTM, formerly the American Society for Testing and Materials) often updates its more widely used standards every year. Sometimes multiple editions are published in a given year.

In accordance with the NTTAA, PHMSA has the responsibility to determine which standards should be added, updated, or removed. PHMSA revises materials incorporated by

reference in the Pipeline Safety Regulations via the rulemaking process, which gives the public and regulated entities the opportunity to provide input. During the rulemaking process, PHMSA must also obtain approval from the Office of the Federal Register to make changes regarding materials incorporated by reference.

Pursuant to section 24 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Pub. L. 112–90), ''the Secretary may not issue guidance or a regulation pursuant to this chapter that incorporates by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge.'' Pursuant to 1 CFR 51.5, Federal agencies must include a discussion in the preamble of the final rule ''the ways that the materials it incorporates by reference are reasonably available to interested parties and how interested parties can obtain the materials.''

To meet the requirements of section 24 of the NTTAA, PHMSA negotiated agreements with AGA, ASME, ASCE, and NFPA. These agreements required the SDOs to make copies of their standards viewable and available to the public at no cost. The mailing addresses and websites of the SDOs are listed in § 193.9.

In addition, PHMSA will provide temporary access to any standard incorporated by reference or proposed to be incorporated by reference. To gain temporary access to industry standards, including those from SDOs with no agreement with PHMSA, please email *phmsastandards@dot.gov* with your request. You must include the following information: (1) phone number; (2) physical address; and (3) email address where we should send a response. PHMSA will respond within five business days and provide access to the standard.

J. Paperwork Reduction Act

Pursuant to 5 CFR 1320.8(d), PHMSA is required to provide interested members of the public and affected agencies with an opportunity to comment on information collection and recordkeeping requests. If adopted, the proposals in this rulemaking would impose new recordkeeping, notification, and reporting requirements on operators of LNG facilities.

OPID Assignment Requests

PHMSA proposes to modify Form F1000.1, the OPID Assignment Request form, and the associated instructions, to allow operators of permanent small-scale LNG facilities to designate themselves as such if they choose to take advantage of the regulatory flexibilities in subpart D. Existing facilities opting for that designation would need to update their OPIDs consistent with the new requirements. PHMSA does not expect the burden for completing Form F1000.1 to change due to this modification.

LNG Annual Reports

PHMSA proposes to modify PHMSA form F7100.3–1, Annual Report for Liquefied Natural Gas Facilities, and its instructions to allow operators to elect to be designated as a ''permanent, small-scale LNG facility'' pursuant to proposed subpart D. PHMSA expects the burden on operators to complete the report to remain the same.

LNG Incident Reporting

PHMSA proposes to expand the scope of incident reporting by requiring operators to report incidents involving the release of any hazardous fluids as defined in the newly proposed § 193.5. PHMSA expects this expansion to result in an increased number of incident reports from operators of LNG facilities.

PHMSA also proposes to modify PHMSA F7100.3 and its instructions to eliminate questions on the value of lost commodity.

Safety-Related Condition Reporting

PHMSA proposes to expand the scope of safety-related condition reporting by requiring operators to consider all releases of hazardous fluids (as defined in the newly proposed § 193.5) at LNG facilities as reportable safety-related conditions. Newly proposed revisions to § 191.23(c) clarify that each operator of an LNG facility must report any safety-related condition that occurs during the initial startup, but not during earlier commissioning activities, before operations commence.

Due to these provisions, PHMSA expects to receive an increased number of safety-related condition reports. The estimated impact on this information collection burden is detailed below.

LNG Notifications and Petitions

Section 193.103(a) requires operators to submit a Siting Package to PHMSA with engineering drawings, piping and instrument drawings, reports from hazard analyses (including exclusion zones), and similar items. Operators must also submit a written assessment showing how these measures affect their hazard calculations and modeling.

In addition, § 193.505 proposes to require operators electing to use subpart F to submit an implementation plan under 49 CFR 190.9 and send copies to FERC, DHS, and each cognizant Coast Guard Captain of the Port (COTP). The implementation plan must detail the operator's pathway to subpart F compliance and include specific work streams, departmental milestones, and deadlines for implementation.

New Recordkeeping Requirements for LNG Operators

PHMSA proposes to expand the recordkeeping requirements for LNG operators. LNG operations must retain records for: general plans and procedures; corrosion control; operations and maintenance; material verification; control center management plans; pressure tests; personnel training; and applications for the use of an alternative risk-based approach to operations and maintenance. These records must be maintained for the life of the facility.

PHMSA proposes a new § 193.11(a) to specify that operators must maintain written plans and procedures in accordance with part 193 and NFPA 59A–2026. Operators must amend these plans as necessary to ensure safety.

In a new § 193.11(c), PHMSA proposes to require operators to record and maintain a change log detailing changes to plans and procedures, highlighting any revisions from the previous version. PHMSA proposes that operators keep a record of the change log for the lifetime of the facility governed by the procedures, unless a different timeframe for is required by another provision of part 193 and NFPA 59A–2026.

The newly proposed § 193.15(c) requires operators to maintain failure investigation records, including investigations of hazardous fluid releases, for a minimum of five years from the conclusion of the investigation.

When an operator chooses the QRA-based approach for siting rather than the traditional, prescriptive siting approach, they must document and maintain records generated in connection with that decision. A new § 193.107 would require operators to submit the records required by NFPA 59A–2026 section 19.2.1, including documentation of the risk assessment methodology, records of environmental and meteorological data used for the assessment, documentation of failure rates and frequencies, records of exclusion zones for flammable vapors and thermal radiation, the final calculated risk levels, and documentation of any specific risk mitigation techniques used to reduce the calculated risk. These records must be maintained for the life of the facility and updated whenever a significant change occurs that would alter the risk profile.

Section 193.401 requires operators to keep and maintain all records required by NFPA 59A–2026 sections 4.6, chapter 16, and chapter 18. NFPA 59A–2026, section 18.3.12, requires that changes to written procedures be documented and reviewed after considering operability, safety, and security.

A new § 193.407 would require each operator of an LNG facility to develop and keep an operations manual that includes procedures for corrosion control; clear guidance to help personnel recognize potential safety-related conditions; methods to ensure a work area is free of hazardous fluids; and repair procedures that provide for the safety of personnel and property.

In a new § 193.409, PHMSA proposes to supplement the requirements of NFPA 59A–2026 section 18.12 to require that operators document, at minimum, the trainee's name, tasks for which they are trained, and other record elements needed for PHMSA verification.

The proposed regulations § 193.503 establish an alternative, risk-based O&M framework for FERC-certificated LNG facilities. Operators must establish and implement written procedures to maintain the on-going integrity of process equipment. The operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test. Each operator shall issue a hot work permit for hot work operations conducted on or near a covered process. The permit shall document that the fire prevention and protection requirements in this part have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work, and identify the object on which hot work is to be performed. The permit shall be kept on file until completion of the hot work operations. Operators would also need to establish and to implement written procedures to manage changes (except for ''in-kind'' replacements) to process chemicals, technology, equipment, and procedures, and changes to facilities that affect a covered process. And operators will need to certify that they have evaluated compliance with the provisions of this section at least every three years to verify that the procedures and practices under their risk-based O&M programs are adequate and are being followed. A report of the audit findings shall be developed, and operators shall retain the two (2) most recent compliance audit reports.

LNG recordkeeping requirements are covered under OMB Control Number 2137–0048. PHMSA will request a revision to the currently approved LNG recordkeeping information collection to include the recordkeeping requirements detailed above. The estimated impact on this information collection is detailed below.

PHMSA will submit an information collection request to OMB for approval based on the requirements in this rule. These information collection requirements are contained in the Pipeline Safety Regulations. 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. Requests for a copy of these information collection requests should be directed to Angela Hill by email at *angela.hill@dot.gov.*

The information collection burden is estimated to be revised as follows:

1. *Title:* National Registry of Pipeline and Liquefied Natural Gas (LNG) Operators.

OMB Control Number: 2137–0627.

Current Expiration Date: 06/30/2028.

Type of Request: Revision.

Abstract: The National Registry of Pipeline and LNG Operators serves as the storehouse for the reporting requirements for an operator regulated or subject to reporting requirements under 49 CFR part 192, 193, or 195. This registry incorporates the use of two forms: OPID Assignment Request (PHMSA F1000.1) and National Registry Notification (PHMSA F1000.2).

PHMSA proposes to modify the OPID Assignment Request form, Form F1000.1, and the associated instructions, to require operators of permanent, small-scale LNG facilities to confirm that designation. PHMSA does not expect operators to incur any additional burden due to this change.

Affected Public: Operators of Pipeline Facilities.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 744.

Total Annual Burden Hours: 744.

Frequency of Collection: On occasion.

2. *Title:* Annual and Incident Reports for Gas Pipeline Operators.

OMB Control Number: 2137–0522.

Current Expiration Date: 10/31/2026.

Abstract: This information collection covers the collection of annual report data from natural gas pipeline operators. PHMSA proposes to modify PHMSA form F7100.3–1, Annual Report for Liquefied Natural Gas Facilities, to allow operators to elect to be designated as a ''permanent, small-scale LNG facility.'' PHMSA does not expect operators to incur any additional burden due to this change.

Affected Public: Natural Gas Pipeline Operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 2,445.

Total Annual Burden Hours: 104,596.

Frequency of Collection: Annual and on occasion.

3. *Title:* Incident Reports for Gas Pipeline Operators.

OMB Control Number: 2137–0635.

Current Expiration Date: 1/31/2029.

Abstract: This information collection covers the collection of incident data from natural gas pipeline operators. PHMSA proposes to expand the scope of incident report to include the release of hazardous fluids. This expansion is expected to result in four additional increased reported incidents from operators of LNG facilities. PHMSA is also revising the LNG Incident Report (form PHMSA F7100.3–X) to remove the requirement for operators to submit data on the value of lost commodities.

Affected Public: Natural Gas Pipeline Operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 1,003.

Total Annual Burden Hours: 4,504.

Frequency of Collection: On occasion.

4. *Title:* Reporting Safety-Related Conditions on Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities.

OMB Control Number: 2137–0578.

Current Expiration Date: 3/31/2029.

Abstract: This information requires operators of LNG facilities to notify PHMSA of safety-related conditions during commissioning, construction, replacement, relocation, significant alteration, operation or maintenance activities, and for any release of LNG or hazardous fluid. Due to the expanded scope of safety-related condition reporting to include the release of hazardous fluids, PHMSA expects to receive two additional reports over three years.

Affected Public: Owners and operators of Liquefied Natural Gas (LNG) facilities.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 176.
Total Annual Burden Hours: 1,056.
Frequency of Collection: On occasion.

5. *Title:* Notification and Petition Requirements for LNG Operators.
OMB Control Number: Will request from OMB.
Current Expiration Date: To be determined by OMB.
Abstract: A person owning or operating a liquefied natural gas (LNG) facility is required to provide information to the Secretary of Transportation at the Secretary's request according to 49 U.S.C. 60117. Part 193 requires LNG operators to make various notifications upon the occurrence of certain events.

These requirements are necessary to ensure safe operation of LNG facilities, ascertain compliance with the Pipeline Safety Regulations, and provide a background for incident investigations. These mandatory notifications help PHMSA stay abreast of issues related to the health and safety of the Nation's pipeline infrastructure.
Affected Public: Owners and operators of LNG facilities.
Annual Reporting and Recordkeeping Burden:
Total Annual Responses: 5.
Total Annual Burden Hours: 5.
Frequency of Collection: On occasion.

6. *Title:* Recordkeeping Requirements for Liquefied Natural Gas (LNG) Facilities.
OMB Control Number: 2137–0048.
Current Expiration Date: 06/30/2027.
Abstract: 49 CFR part 193 requires operators of liquefied natural gas (LNG) facilities to maintain records, as needed, pertaining to facility design, operations, maintenance, and personnel training. The purpose of this mandatory information collection request is to ensure compliance with the recordkeeping requirements prescribed in the Pipeline Safety Regulations. LNG operators must make and maintain records as described and have those records available for compliance inspection by PHMSA staff upon request. Examples of such records include the results of personnel training activities; records of materials used for components, buildings, foundations, and LNG support systems; maps; and various facility maintenance activities. Most of the required records are to be kept for as long as the facility is in service. Personnel records must be maintained for one year after personnel are no longer assigned duties at the LNG plant. This information collection revision covers the new recordkeeping requirements contained in the Pipeline Safety: Amendments to Liquefied Natural Gas Facilities NPRM. PHMSA estimates that the operators will spend approximately 40 hours, annually, complying with the various recordkeeping requirements. The burden estimate below has been updated accordingly.
Affected Public: Owners and operators of Liquefied Natural Gas (LNG) facilities.
Annual Reporting and Recordkeeping Burden:
Total Annual Responses: 42,284.
Total Annual Burden Hours: 17,521.
Frequency of Collection: On occasion.

Comments on these information collections 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; and
(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Please submit any comments, identified by the docket number in the heading of this document, to OMB, Office of Information and Regulatory Affairs, Attn: Desk Officer for the Department of Transportation, 725 17th Street NW, Washington, DC 20503, and to PHMSA by the methods described in the **ADDRESSES** section. Comments should be submitted on or before January 4, 2027.

K. Severability

This NPRM represents a reasoned determination by PHMSA, based on its technical expertise and review of the administrative record, that the anticipated safety and avoided (compliance and opportunity) cost saving benefits of each of the amendments proposed herein preliminarily justify any associated compliance and other costs. As discussed throughout the NPRM, PHMSA's part 193 regulations governing LNG facilities consist of mutually-reinforcing elements of a conservative, defense-in-depth strategy to reducing public safety risks associated with siting, design, construction, installation, and operation of LNG facilities; NFPA 59A–2026 provisions which the NPRM proposes to incorporate by reference as the core of its part 193 regulations were selected by a consensus decision of a diverse group of technical experts from industry and State and Federal regulators consistent with that approach. Although the PRIA notes that the difficulty in identifying with precision the incremental safety contributions from particular proposed regulatory amendments in this NPRM (and by extension, provisions of NFPA 59A–2026), PHMSA generally understands that most of its proposed amendments could be severed from the rest of the proposals herein without adversely affecting the balance of cost and benefits justifying other proposed amendments—whether considered individually or in aggregate. This preliminary assessment holds in particular for those elements of the NPRM that function as alternatives to other, default requirements (*e.g.,* the QRA-based siting alternative at § 193.107; the risk-based operations and maintenance alternative at subpart F), as well as the application of various proposals throughout to any particular category of PHMSA-jurisdictional LNG facility (*e.g.,* application of subpart B siting requirements to peak shavers as well as FERC-jurisdictional LNG terminals).

PHMSA solicits stakeholder comment on which of the NPRM's proposals are severable from other elements of the rulemaking, or as applied to any particular category of PHMSA-jurisdictional LNG facility.

List of Subjects

49 CFR Part 191

Liquefied natural gas, Pipeline reporting requirements.

49 CFR Part 193

Incorporation by reference, Liquefied natural gas, Pipeline safety.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR parts 191 and 193 as follows:

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL REPORTS, INCIDENT REPORTS, AND SAFETY-RELATED CONDITION REPORTS

■ 1. The authority citation for part 191 continues to read as follows:

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C. 5121, 60101 *et seq.,* and 49 CFR 1.97.

■ 2. In § 191.3, revise the definitions of ''Incident'' and ''LNG facility'' and add the definition of ''LNG plant'' in alphabetical order to read as follows:

§ 191.3 Definitions.

* * * * *

Incident means any of the following events:

(1) An event that involves a release of gas from a pipeline, gas from an underground natural gas storage facility (UNGSF), liquefied natural gas, liquefied petroleum gas, refrigerants, or other hazardous fluid (as defined in § 193.5 of this chapter) from an LNG facility, and that results in one or more of the following consequences:

(i) A death, or personal injury necessitating in-patient hospitalization;

(ii) Estimated property damage of $122,000 or more, including loss to the operator and others, or both, but excluding the cost of gas or hazardous fluids (as defined in § 193.5 of this chapter) lost. For adjustments for inflation observed in calendar year 2021 onwards, changes to the reporting threshold will be posted on PHMSA's website. These changes will be determined in accordance with the procedures in appendix A to this part; or

(iii) Unintentional estimated gas loss of three million cubic feet or more.

(2) An event that results in an emergency shutdown of an LNG facility or a UNGSF. Activation of an emergency shutdown system for reasons other than an actual emergency within the facility does not constitute an incident.

(3) An event that is significant in the judgment of the operator, even though it did not meet the criteria of paragraph (1) or (2) of this definition.

LNG facility means a liquefied natural gas facility as defined in § 193.5 of this chapter.

LNG plant means an LNG facility or collection of LNG facilities functioning as a unit.

* * * * *

■ 3. In § 191.22:

■ a. Remove the word ''or'' at the end of paragraph (c)(2)(iv);

■ b. Remove the period at the end of paragraph (c)(2)(v) and add ''; or'' in its place; and

■ c. Add paragraph (c)(2)(vi).

The addition reads as follows:

§ 191.22 National Registry of Operators.

* * * * *

(c) * * *

(2) * * *

(vi) Election of the requirements of subpart D of part 193 of this chapter.

* * * * *

■ 4. In § 191.23, revise the introductory text of paragraph (a) and paragraphs (a)(3), (4), (6), (7), and (9) and add paragraph (c) to read as follows:

§ 191.23 Reporting safety-related conditions.

(a) Except as provided in paragraphs (b) and (c) of this section, each operator shall report in accordance with § 191.25 the existence of any of the following safety-related conditions involving facilities in service:

* * * * *

(3) Unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability of a pipeline or the structural integrity or reliability of a UNGSF or LNG facility that contains, controls, or processes hazardous fluids (as defined in § 193.5 of this chapter).

(4) Any crack or other material defect that impairs the structural integrity or reliability of a UNGSF or an LNG facility that contains, controls, or processes hazardous fluids (as defined in § 193.5 of this chapter).

* * * * *

(6) Any malfunction or operating error that causes the pressure—plus the margin (build-up) allowed for operation of pressure limiting or control devices—to exceed either the maximum allowable operating pressure of a distribution or gathering line, the maximum well allowable operating pressure of a UNGSF, or the maximum allowable working pressure of an LNG facility that contains or processes hazardous fluids (as defined in § 193.5 of this chapter).

(7) A leak in a pipeline, UNGSF, or LNG facility that contains or processes hazardous fluids (as defined in § 193.5 of this chapter) that constitutes an emergency.

* * * * *

(9) Any safety-related condition that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a 20 percent or more reduction in operating pressure or shutdown of operation of a pipeline, UNGSF, or an LNG facility that contains or processes hazardous fluids (as defined in § 193.5 of this chapter).

* * * * *

(c) Each operator of an LNG facility must report any safety-related condition specified in paragraph (a) of this section that occurs during initial startup before operations.

■ 5. In § 191.25, revise paragraph (a) and the introductory text of paragraph (c) to read as follows:

§ 191.25 Filing safety-related condition reports.

(a) Each report of a safety-related condition under § 191.23(a)(1) through (9) and (11) and (c) must be filed (received by the Associate Administrator) in writing within 5 working days (not including Saturday, Sunday, or Federal holidays) after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. Reporting methods and report requirements are described in paragraph (c) of this section.

* * * * *

(c) Reports must be filed by email to *InformationResourcesManager@dot.gov* or by facsimile to (202) 366–7128. For a report made pursuant to § 191.23(a)(1) through (9) and (11) and (c), the report must be headed ''Safety-Related Condition Report.'' For a report made pursuant to § 191.23(a)(10), the report must be headed ''Maximum Allowable Operating Pressure Exceedances.'' All reports must provide the following information:

* * * * *

■ 6. Revise and republish part 193 to read as follows:

PART 193—LIQUEFIED NATURAL GAS FACILITIES: MINIMUM FEDERAL SAFETY STANDARDS

Subpart A—General

Sec.
193.1 Scope of part.
193.3 Applicability.
193.5 Definitions.
193.7 Rules of regulatory construction.
193.9 What documents are incorporated by reference partly or wholly in this part?
193.11 Plans and procedures.
193.13 Mobile and temporary LNG facilities.
193.15 Investigations of failures.

Subpart B—Siting

193.101 Scope.
193.103 Hazard analysis.
193.105 Exclusion zones.
193.107 Quantitative risk assessment.
193.109 Proximity to airport or runway.

Subpart C—Design, Construction, and Installation

193.201 Scope.
193.203 Plant design—Wind speed.
193.205 Vaporizers: Isolation valves.
193.207 Impoundment structural requirements.
193.209 Water removal from impounding areas.
193.211 Non-destructive examinations (NDE) for components with hazardous fluids.

Subpart D—Permanent, Small-Scale LNG Facilities

193.301 Small-scale LNG facilities.

Subpart E—Operations and Maintenance

193.401 Scope.
193.403 Purging.
193.405 Communication systems.
193.407 Maintenance procedures.
193.409 Personnel qualifications and training.
193.411 Control systems for fire protection systems.
193.413 Physical security.

Subpart F—Risk-Based Operations and Maintenance

193.501 Scope.
193.503 Program content requirements.
193.505 Implementation plans.

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C. 5103, 60101 *et seq.;* and 49 CFR 1.97.

Subpart A—General

§ 193.1 Scope of part.

(a) This part prescribes safety standards for LNG facilities used in the transportation of gas by pipeline that is subject to the pipeline safety laws (49 U.S.C. 60101 *et seq.*) and part 192 of this subchapter.

(b) This part does not apply to:

(1) LNG facilities used by ultimate consumers of LNG or natural gas.

(2) LNG facilities used in the course of natural gas treatment or hydrocarbon extraction that do not store LNG.

(3) In the case of a marine transfer area for LNG as defined in 33 CFR 127.005, any matter other than siting.

(4) Any LNG facility located in navigable waters (as defined in section 3(8) of the Federal Power Act (16 U.S.C. 796(8)).

§ 193.3 Applicability.

(a) The requirements in this part governing siting, design, installation, or construction (including material incorporated by reference) do not apply retroactively to existing LNG facilities or to proposed LNG facilities that an appropriate authority approved before the requirements went into effect.

(b) If an LNG facility covered by paragraph (a) of this section is replaced, relocated, or significantly altered on or after [EFFECTIVE DATE OF THE FINAL RULE], then the LNG facility must comply with the applicable requirements of this part governing siting, design, installation, and construction, except that:

(1) The siting requirements apply only to LNG storage tanks that are significantly altered by increasing the storage capacity or relocated; and

(2) To the extent the operator determines compliance with design, installation, and construction requirements make any replaced, relocated, or altered LNG facility incompatible with other LNG facilities, or would otherwise be impracticable, the replaced, relocated, or significantly altered LNG facility may be designed, installed, or constructed in accordance with the original specifications for the LNG facility.

§ 193.5 Definitions.

The definitions in chapter 3 of NFPA 59A (incorporated by reference, *see* § 193.9) are incorporated by reference for use in this part except as substituted, modified, or supplemented in this section:

Administrator means the Administrator, Pipeline and Hazardous Materials Safety Administration or a delegate.

Component means any part, or system of parts functioning as a unit, whose integrity or reliability is necessary to maintain safety in controlling, processing, or containing a hazardous fluid, including, but not limited to, piping, pressure vessels, processing equipment, containers, control devices, impounding systems, lighting, security devices, fire control equipment, and communication equipment.

Design pressure means the pressure used in the design of components for the purpose of determining the minimum permissible thickness or physical characteristics of its various parts. When applicable, the static head must be included in the design pressure to determine the thickness of any specific part.

Design spill means a potential spill or release from LNG and hazardous fluid containers, piping, and equipment at liquefaction, storage, transfer, or other process areas in an LNG facility.

Determine means to make a decision based on an appropriate investigation using scientific methods and sound engineering judgment, including documentation that demonstrates the basis of the decision.

Emergency means a deviation from normal operation, a structural failure, or severe environmental conditions that would probably cause harm to people or property.

Exclusion zone means an area within or surrounding an LNG facility in which an operator or government agency legally controls all activities in accordance with subpart B of this part for as long as the facility is in operation.

Gas except when designated as inert, means natural gas, other flammable gas, or gas which is toxic or corrosive.

Hazardous fluid means a hazardous liquid or gas that is flammable, toxic, or corrosive.

Hazardous liquid means LNG or a liquid that is flammable, corrosive, or toxic.

Impounding system includes an impounding area and dikes and floors for conducting the flow of spilled hazardous liquids to an impounding area.

Liquefied natural gas or *LNG* means natural gas or synthetic gas having methane (CH_4) as its major constituent that has been changed to a liquid.

LNG facility means a pipeline facility that is used for liquefying natural gas or synthetic gas or transferring, storing, vaporizing liquefied natural gas, including on-site power generation facilities.

Maximum allowable working pressure (MAWP) means the maximum gauge pressure permissible at the top of the equipment, containers, or pressure vessels while operating at design temperature.

Normal operation means functioning within allowable ranges of pressure, temperature, flow, and other operating criteria consistent with the requirements of this part.

Operator means a person who owns or operates a pipeline facility.

Person means any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, including any trustee, receiver, assignee, or personal representative thereof.

Pipeline facility means new and existing piping, rights of way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation, including an LNG facility.

Piping means line pipe, tubing, hoses, fittings, valves, pumps, connections, safety devices, or related components for containing the flow of hazardous fluids.

Transfer piping means a system of permanent or temporary piping, or both, used for transferring hazardous fluids between any of the following: liquefaction process facilities, storage tanks, vaporizers, compressors, cargo transfer systems, and facilities other than pipeline facilities.

Transfer system includes transfer piping and cargo transfer systems.

Vaporization means the addition of thermal energy that changes a liquid to a vapor or gaseous state.

§ 193.7 Rules of regulatory construction.

(a) As used in this part:

(1) *Includes* means including but not limited to;

(2) *May* means is permitted to or authorized to;

(3) *May not* means is not permitted to or not authorized to; and

(4) *Must* is used in the mandatory and imperative sense.

(5) *Shall* is used in the mandatory and imperative sense.

(b) In this part:

(1) Words importing the singular include the plural; and

(2) Words importing the plural include the singular.

§ 193.9 What documents are incorporated by reference partly or wholly in this part?

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, PHMSA must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at the Pipeline and Hazardous Materials Safety Administration (PHMSA) and at the National Archives and Records Administration (NARA). Contact PHMSA at: The Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; phone: (202) 366–4046; website: *www.phmsa.dot.gov/pipeline/regs.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the sources in the following paragraphs of this section.

(b) American Concrete Institute (ACI), 38800 Country Club Drive, Farmington Hills, MI 48331; phone: (248) 848–3800; website: *www.concrete.org/.*

(1) ACI 304R–00, Guide for Measuring, Mixing, Transportation and Placing of Concrete, reapproved 2009, (ACI 304R); IBR approved for § 193.201.

(2) ACI 318–25, Building Code Requirements for Structural Concrete and Commentary, published January 15, 2025, (ACI 318); IBR approved for § 193.201.

(3) ACI 376, Refrigerated Liquefied Gas Containment for Concrete Structures—Code Requirements and Commentary, published July 1, 2023, (ACI 376); IBR approved for § 193.201.

(c) American Gas Association (AGA), 400 North Capitol Street NW, Washington, DC 20001; phone: (202) 824–7000; website: *www.aga.org.*

(1) American Gas Association (AGA), ''Purging Manual,'' 4th edition, September 2018, (Purging Manual), IBR approved for § 193.403.

(2) [Reserved]

(d) American Petroleum Institute (API), 200 Massachusetts Avenue NW, Suite 1100, Washington, DC 20001–5571; phone: (202) 682–8000; website: *www.api.org/.*

(1) API 510, Pressure Vessel Inspection Code: In-service Inspection, Rating, Repair, and Alteration, 11th edition, published March 2, 2023, (API 510); IBR approved for § 193.401.

(2) API RP 576, Inspection of Pressure-Relieving Devices, 5th edition, September 27, 2024, (API RP 576); IBR approved for § 193.401.

(3) API Specification 6D, Specification for Valves, 25th edition, November 1, 2021, including Errata (December 2021), Errata 2 (April 2022), Errata 3 (October 2023), Addendum 1 (April 2023), Addendum 2 (September 2024), and Addendum 3 (March 2025), (API Spec 6D); IBR approved for § 193.201.

(4) API Standard 620, Design and Construction of Large, Welded, Low-pressure Storage Tanks, 12th edition, effective October 2013, including Addendum 1 (November 2014), Addendum 2 (April 2018), Addendum 3 (March 2021), Addendum 4 (February 2025), Errata 1 (March 2025), (API Std 620); IBR approved for § 193.201.

(5) API STD 625, Tank Systems for Refrigerated Liquefied Gas Storage, 1st edition, August 1, 2010, including Addendum 1 (July 2013), Addendum 2 (November 2014), Addendum 3 (June 2018), Addendum 4 (August 2021), Addendum 5 (February 2025), (API STD 625); IBR approved for § 193.201.

(6) API Standard 650, Welded Tanks for Oil Storage, 13th edition, March 2020, including Errata 1 (January 2021), (API Std 650); IBR approved for § 193.201.

(7) API Standard 2510, Design and Construction of LPG Installations, 9th Edition, August 2020, (API Std 2510); IBR approved for § 193.201.

(e) American Society of Civil Engineers (ASCE), 1801 Alexander Bell Drive, Reston, VA 20191; phone: (800) 548–2723, 703 295–6300 (international); website: *www.asce.org/.*

(1) ASCE/SEI 7–22, Minimum Design Loads and Associated Criteria for Buildings and Other Structures, January 1, 2022, includes Supplement 2 (2023), (ASCE/SEI 7); IBR approved for §§ 193.201 and 193.203.

(2) [Reserved]

(f) American Society of Mechanical Engineers (ASME), Two Park Avenue, Suite 1600, New York, NY 10016–5990; phone: (800) 843–2763; email: *CustomerCare@asme.org;* website: *www.asme.org.*

(1) ASME B31.1, Power Piping, 2024 edition, issued October 15, 2024, (ASME B31.1); IBR approved for § 193.201.

(2) ASME B31.3, Process Piping, 2024 edition, issued December 27, 2024, (ASME B31.3); IBR approved for §§ 193.201 and 193.401.

(3) ASME B31.4, Pipeline Transportation Systems for Liquids and Slurries, 2022 edition, issued December 8, 2022, (ASME B31.4); IBR approved for § 193.201.

(4) ASME B31.5, Refrigeration Piping and Heat Transfer Components, 2022 edition, approved November 28, 2022, (ASME B31.5); IBR approved for § 193.201.

(5) ASME B31.8, Gas Transmission and Distribution Piping Systems, 2022 edition, issued December 22, 2022, (ASME B31.8); IBR approved for § 193.201.

(6) ASME Boiler & Pressure Vessel Code, Section VIII, Division 1, Rules for Construction of Pressure Vessels, 2023 edition, July 1, 2023, (ASME BPVC); IBR approved for §§ 193.201 and 193.211.

(g) American Society for Nondestructive Testing (ASNT), 1201 Dublin Road, Suite #G04, Columbus, OH 43215; phone: (800) 222–2768; website: *www.asnt.org/.*

(1) ASNT SNT–TC–1A 2020, Personnel Qualification and Certification in Nondestructive Testing, approved January 1, 2020, (ASNT SNT–TC–1A); IBR approved for §§ 193.201 and 193.401.

(2) [Reserved]

(h) ASTM International (ASTM), 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: (877) 909–2786; website: *www.astm.org/* or *www.astm.org/help/contact.*

(1) ASTM E84–24, Standard Test Method for Surface Burning Characteristics of Building Materials, approved August 1, 2024, (ASTM E84); IBR approved for § 193.201.

(2) ASTM E136, Standard Test Method for Assessing Combustibility of Materials Using a Vertical Tube Furnace at 750 °C, approved January 2, 2024, (ASTM E136); IBR approved for § 193.201.

(3) ASTM E2652, Standard Test Method for Assessing Combustibility of Materials Using a Tube Furnace with a Cone-shaped Airflow Stabilizer, at 750 °C approved November 1, 2022, (ASTM E2652); IBR approved for § 193.201.

(i) Brazed Aluminum Plate-fin Heat Exchanger Manufacturers' Association (ALPEMA), P.O Box 1390, Navasota, TX 77868; phone: +41 (021) 693–5981; website: *www.alpema.org/.*

(1) Standards of the Brazed Aluminum Plate-Fin Heat Exchanger Manufacturers Association, 4th edition, published January 1, 2024; IBR approved for § 193.201.

(2) [Reserved]

(j) Center for Chemical Process Safety (CCPS), 120 Wall Street, FL 23, New York, NY 10005; phone: (800) 242–4363; website: *www.aiche.org/.*

(1) Guidelines for Hazard Evaluation Procedures, 3rd edition, April 2008; IBR approved for § 193.503.

(2) [Reserved]

(k) Compressed Gas Association (CGA), 8484 Westpark Drive, Suite 220 McLean, VA 22102; phone: (703) 788–2700; website: *www.cganet.com/.*

(1) CGA 341, Specification for Insulated Cargo Tank Specification for Nonflammable Cryogenic Liquids, published August 2023, (CGA 341); IBR approved for § 193.201.

(2) CGA S–1.3, Pressure Relief Device Standards—part 3—Stationary Storage Containers for Compressed Gases, published September 2024, (CGA S–1.3); IBR approved for § 193.201.

(l) CSA Group (CSA), 55 Broadway 14th Floor, New York, NY 10006–3729; phone: (787) 641–6800; website: *www.csagroup.org/.*

(1) CSA B51–24, Boiler, Pressure Vessel and Pressure Piping Code, published April 2024, (CSA B51); IBR approved for § 193.201.

(2) CSA C22.1–24, Canadian Electrical Code, 26th edition, published March 4, 2024, (CSA C22.1); IBR approved for § 193.201.

(m) International Society of Automation (ISA), P.O. Box 12277 Research Triangle Park, NC 27709; phone: (919) 549–8411; website: *www.isa.org/.*

(1) ISA 12.27.01, Requirements for Process Sealing Between Electrical Systems and Flammable or Combustible Process Fluids, 2016, (ISA 12.27.01); IBR approved for § 193.201.

(2) [Reserved]

(n) National Board of Boiler and Pressure Vessel Inspectors (NBBI), 1055 Crupper Avenue Columbus, OH 43229; phone: (614) 888–8320; website: *www.nationalboard.org/.*

(1) NBBI, NB 23, National Board Inspection Code, part 2, Inspection, July 1, 2023, (NB 23); IBR approved for § 193.401.

(2) [Reserved]

(o) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169–7471; phone: (800) 344–3555; website: *www.nfpa.org/.*

(1) NFPA 13, Standard for the Installation of Sprinkler Systems, 2025 edition, issued August 29, 2024, (NFPA 13); IBR approved for §§ 193.201 and 193.401.

(2) NFPA 14, Standard for the Installation of Standpipe and Hose Systems, 2024 edition, issued August 25, 2023, (NFPA 14); IBR approved for §§ 193.201 and 193.401.

(3) NFPA 15, Standard for Water Spray Fixed Systems for Fire Protection, 2022 edition, issued November 26, 2020, (NFPA 15); IBR approved for §§ 193.201 and 193.401.

(4) NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, 2025 edition, issued August 29, 2024, (NFPA 20); IBR approved for §§ 193.201 and 193.401.

(5) NFPA 22, Standard for Water Tanks for Private Fire Protection, 2023 edition, issued April 14, 2022, (NFPA 22); IBR approved for §§ 193.201 and 193.401.

(6) NFPA 24, Standard for the Installation of Private Fire Service Mains and Their Appurtenances, 2025 edition, issued April 22, 2024, (NFPA 24); IBR approved for §§ 193.201 and 193.401.

(7) NFPA 30, Flammable and Combustible Liquids Code, 2024 edition, issued January 1, 2024, (NFPA 30); IBR approved for § 193.201.

(8) NFPA 37, Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines, 2024 edition, issued December 1, 2023, (NFPA 37); IBR approved for § 193.201.

(9) NFPA 51B, Standard for Fire Prevention During Welding, Cutting and Other Hot Work, 2024 edition, issued December 1, 2023, (NFPA 51B); IBR approved for §§ 193.201 and 193.401.

(10) NFPA 54/ANSI Z22.3.1, National Fuel Gas Code, 2024 edition, issued August 25, 2023, (NFPA 54); IBR approved for § 193.201.

(11) NFPA 56, Standard for Fire and Explosion Prevention During Cleaning and Purging of Flammable Gas Piping Systems, 2023 edition, issued November 29, 2022, (NFPA 56); IBR approved for § 193.401.

(12) NFPA 58, Liquefied Petroleum Gas Code, 2024 edition, issued August 25, 2023, (NFPA 58); IBR approved for § 193.201.

(13) NFPA 59, Utility LP-Gas Plant Code, 2024 edition, issued August 25, 2023, (NFPA 59); IBR approved for § 193.201.

(14) NFPA 59A, Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG), 2026 edition, issued November 19, 2025, (NFPA 59A). IBR approved for §§ 193.5; 193.13; 193.101; 193.103; 193.105; 193.107; 193.201; 193.203; 193.207; 193.301; 193.401; 193.403; 193.405; 193.407; 193.409; 193.411; and 193.501.

(15) NFPA 68, Standard on Explosion Protection by Deflagration Venting, 2023 edition, issued November 29, 2022, (NFPA 68); IBR approved for §§ 193.201 and 193.401.

(16) NFPA 70, National Electrical Code, 2026 edition, issued August 20, 2025, (NFPA 70); IBR approved for § 193.201.

(17) NFPA 72, National Fire Alarm and Signaling Code, 2025 edition, issued August 29, 2024, (NFPA 72); IBR approved for §§ 193.201 and 193.401.

(18) NFPA 85, Boiler and Combustion Systems Hazards Code, 2023 edition, issued November 29, 2022, (NFPA 85); IBR approved for § 193.201.

(19) NFPA 86, Standard for Ovens and Furnaces, 2023 edition, issued August 12, 2022, (NFPA 86); IBR approved for § 193.201.

(20) NFPA 101, Life Safety Code, 2024 edition, issued August 25, 2023, (NFPA 101); IBR approved for §§ 193.201 and 193.401.

(21) NFPA 110, Standard for Emergency and Standby Power Systems, 2025 edition, issued April 22, 2024, (NFPA 110); IBR approved for § 193.201.

(22) NFPA 274, Standard Test Method to Evaluate Fire Performance Characteristics of Pipe Insulation, 2023 edition, issued November 29, 2022, (NFPA 274); IBR approved for § 193.201.

(23) NFPA 496, Standard for Purged and Pressurized Enclosures for Electrical Equipment, 2024 edition, issued April 23, 2023, (NFPA 496); IBR approved for § 193.201.

(24) NFPA 600, Standard on Fire Brigades, 2025 edition, issued November 16, 2024, (NFPA 600); IBR approved for § 193.401.

(25) NFPA 750, Standard on Water Mist Fire Protection Systems, 2023 edition, issued March 20, 2022, (NFPA 750); IBR approved for §§ 193.201 and 193.401.

(26) NFPA 1225, Standard for Emergency Communications Services, 2022 edition, issued August 26, 2021, (NFPA 1225); IBR approved for §§ 193.201 and 193.401.

(27) NFPA 5000, Building Construction and Safety Code, 2024 edition, issued August 25, 2023, (NFPA 5000); IBR approved for § 193.201.

(p) UL Solutions, 1250 Connecticut Avenue Northwest, Suite 520, Washington, DC 20036; phone: (202) 296–7840; website: *www.ul.com/.*

(1) UL 723, Test for Surface Burning Characteristics of Building Materials, 11th edition, 2018, revised April 27, 2023 (UL 723); IBR approved for § 193.201.

(2) [Reserved]

§ 193.11 Plans and procedures.

(a) *General.* Each operator must develop and follow written plans and procedures required by this part. All plans or procedures must be available for review and inspection.

(b) *Review and update.* Each operator must review and update the plans and procedures required by this part—

(1) When a component is installed, replaced, relocated, or otherwise changed; or

(2) At least once every two calendar years, with intervals not exceeding 27 months.

(c) *Changes.* Changes to plans and procedures must be recorded in a log that is maintained for the life of the LNG facility.

§ 193.13 Mobile and temporary LNG facilities.

(a) Operators of mobile and temporary LNG facilities used for peak-shaving, service maintenance during gas pipeline systems repair, alteration, or other short-term applications that are in compliance with chapter 14 of NFPA 59A (incorporated by reference, *see* § 193.9) need not comply with the requirements of this part other than those in this subpart.

(b) Operators of mobile and temporary LNG facilities must provide to PHMSA or the applicable State agency a location description of each facility at least two weeks in advance of the installation, including the details of location, leakage containment or control, firefighting equipment, and methods employed to restrict public access, except that in the case of emergency where such notice is not possible, as much advance notice as possible must be provided.

(c) Operators of mobile and temporary LNG facilities shall be subject to the reporting requirements in part 191 of this subchapter.

§ 193.15 Investigations of failures.

(a) Operators must investigate and determine the cause of any event involving a failure of the integrity or function of systems containing hazardous fluids occurring during commissioning, initial start-up, or operation, as well as any explosion, fire, or hazardous fluid release that results in:

(1) Death or injury requiring hospitalization; or

(2) Estimated property damage of $122,000 or more, including loss to the operator and others, or both, but excluding the cost of gas lost. For adjustments for inflation observed in calendar year 2021 onwards, changes to the reporting threshold will be posted on PHMSA's website. These changes will be determined in accordance with the procedures in appendix A to part 191 of this subchapter.

(b) If the Administrator or relevant State agency under the pipeline safety laws (49 U.S.C. 60101 *et seq.*) investigates a failure, the operator involved shall make available all relevant information and provide reasonable assistance in conducting the investigation. Unless necessary to restore or maintain service, or for safety, no component involved in the incident may be moved from its location or otherwise altered until the investigation is complete or the investigating agency otherwise authorizes. Where components must be moved for operational or safety reasons, they must not be removed from the LNG facility and must be maintained intact to the extent practicable until the investigation is complete, or the investigating agency otherwise authorizes.

(c) Operators must maintain investigation records for a minimum of 5 years from conclusion of the investigation.

Subpart B—Siting

§ 193.101 Scope.

(a) This subpart prescribes requirements for LNG facility siting.

(b) Except as specified in § 193.3 or as provided otherwise by this subpart, each LNG facility that is designed, constructed, replaced, relocated, or significantly altered on or after [5 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE], must comply with the requirements of this subpart and sections 5.2.1 and 5.3.1 of NFPA 59A (incorporated by reference, *see* § 193.9). In the event of a conflict between NFPA 59A and the provisions of this subpart, the provisions of this subpart shall prevail.

§ 193.103 Hazard analysis.

Each operator shall perform an evaluation of hazards and calculation of the extent of hazards for each container, piping, and other equipment containing LNG or other hazardous fluids in accordance with this section and section 5.3.2 of NFPA 59A (incorporated by reference, see § 193.9) and:

(a) Each operator shall submit a siting package consisting of the following material documentation:

(1) Project description, background, purpose and details describing the proposed LNG facility;

(2) Hazard reports, including any attachments and referenced reports;

(3) Facility location map(s), topography map(s), and site aerial photography;

(4) Engineering drawings including an overall plot plan showing the LNG facility's property boundary and unit plot plans for each process area or system showing the location and elevation of major equipment;

(5) Piping and instrument drawings;

(6) Process Flow Diagrams;

(7) Heat and Material Balance Sheets;

(8) Piping Inventory Table;

(9) Pump and compressor curves for pumps and compressors used for hazardous fluid service;

(10) Sketch on plot plan showing expected locations and elevations of major potential single accidental leakage sources;

(11) Dimensions, capacities, and thermal properties for any impoundments associated with the project;

(12) Design details for mitigation measures (including vapor barriers and pipe-in-pipe systems) and assessment of the effect of such measures on evaluation of and calculation of the extent of hazards; and

(13) The summary report of all input and output parameters for hazard modeling.

(b) The design spill criteria for ''Piping and Other Equipment'' shall include, in lieu of design spill criteria in Table 5.3.2.3 of NFPA 59A, the following:

(1) For piping within process systems or transfer areas involving hazardous fluids greater than or equal to six inches in diameter, a hole two inches in diameter applied at any location along the piping segment;

(2) For piping within process systems or transfer areas involving hazardous fluids less than six inches in diameter, a hole size equivalent to a full-bore rupture applied at any location along the piping segment;

(3) For pipe-in-pipe systems serving as secondary containment, an unobstructed release from a hole one inch in diameter applied at the operating conditions of the inner pipe;

(4) For single-ply construction expansion bellows, a hole size equivalent to a full-bore rupture of the expansion joint applied at any location along the piping segment applied at the expansion joint; and

(5) For transfer hoses, a hole size equivalent to a full-bore rupture of the transfer hose applied at any location along the transfer hose.

(c) Evaluation and calculation of the extent of hazards shall employ source terms and hazard models reviewed against PHMSA-approved Model Evaluation Protocols and Model Validation Databases maintained on PHMSA's website: *https://www.phmsa.dot.gov.*

(d) Evaluation and calculation of the extent of flammable and toxic vapor-gas dispersion hazards shall employ an elevation parameter of 0.5 meters.

(e) Calculation of the extent of flammable vapor-gas and toxic vapor dispersion hazards shall continue until the greater of the time for the dispersion

hazards to reach their maximum extent and the design spill duration pursuant to section 5.3.2.4 of NFPA 59A.

(f) Calculation of the extent of hazards shall employ any uncertainty factor generated under PHMSA-approved model evaluation protocols pursuant to paragraph (c) of this section.

(g) Evaluation and calculation of the extent of hazards shall consider any supporting documentation for active mitigation measures identified in the siting package.

§ 193.105 Exclusion zones.

Each operator (or applicant, as applicable) evaluating and calculating the extent of hazards pursuant to § 193.103 must establish exclusion zones, occupancy restrictions, and develop any public notification protocols in consultation with applicable State and local emergency management and response organizations with respect to each LNG and hazardous fluid container, piping, and other equipment in accordance with this section and section 5.3.2 of NFPA 59A (incorporated by reference, *see* § 193.9) provided that:

(a) Operators shall, for a design spill resulting in a toxic cloud with concentration levels corresponding to AEGL–2 and AEGL–3 levels and an exposure duration of one hour or less, establish exclusion zones and occupancy restrictions for toxic vapor dispersion hazards pursuant to Table 5.3.2.9 of NFPA 59A; for other areas with toxic vapor concentration levels and exposure durations at or above AEGL–1, development of any public notification procedures in consultation with applicable State and local emergency management and response organizations will be required in accordance with the facility's emergency response plan; and

(b) An operator need not demonstrate legal control of activities in, or be subject to occupancy restrictions with respect to, any public road, any public right-of-way, and navigable waters.

§ 193.107 Quantitative risk assessment.

As an alternative to the requirements of §§ 193.103 and 193.105, an operator may perform an evaluation of hazards, including calculation of risks to individuals and society with respect to each of fatality and irreversible harm from those hazards, for each container, piping, and other equipment containing LNG or other hazardous fluids in accordance with this section and chapter 19 of NFPA 59A (incorporated by reference, see § 193.9), provided that:

(a) Each operator shall submit material documentation required by NFPA 59A section 19.2.1;

(b) NFPA 59A section 19.1.3 shall not apply;

(c) Evaluation of hazards and risks shall employ hazard models reviewed against PHMSA-approved Model Evaluation Protocols and Model Validation Databases maintained on PHMSA's website: *https://www.phmsa.dot.gov;*

(d) Operators need not evaluate hazards from releases on feed gas or send-out gas lines;

(e) The land use restrictions and risk mitigation requirements of NFPA 59A sections 19.10 and 19.11 shall not apply to public roads, public rights-of-way, and navigable waters; and

(f) Each operator shall comply with risk tolerability criteria (including land use restrictions) in NFPA 59A section 19.10 and risk mitigation requirements in NFPA 59A section 19.11.

§ 193.109 Proximity to airport or runway.

An LNG storage tank system must not be located within a horizontal distance of 1 mile (1.6 km) from where an airport runway ends or ¼ mile (0.4 km) from the nearest point of a runway, whichever is longer. The height of LNG structures in the vicinity of an airport must also comply with applicable Federal Aviation Administration requirements.

Subpart C—Design, Construction, and Installation

§ 193.201 Scope.

(a) This subpart prescribes requirements for the design, construction, and installation of LNG facilities.

(b) LNG facilities designed—and new, replaced, relocated, or significantly altered equipment installed—after [EFFECTIVE DATE OF THE FINAL RULE] must, except as otherwise provided in this subpart, comply with design, construction, and installation requirements within each of the following:

(1) Chapter 4 (General Requirements); sections 5.2.3 (All-Weather Accessibility), and 5.2.4 (Surface Water Drainage); chapter 6 (Plant Layout); chapter 7 (Process Equipment); chapter 8 (Stationary LNG Storage); chapter 9 (Vaporization Facilities); chapter 10 (Piping System and Components); chapter 11 (Instrumentation and Electrical Services); chapter 12 (Plant Facilities Design); chapter 13 (Impounding Area and Drainage System Design and Capacity); chapter 15 (Transfer Systems for LNG and Other Hazardous Materials); chapter 16 (Fire Protection, Safety, and Security); and sections 18.8 (Commissioning) and 18.11.13 (Corrosion Protection) of NFPA–59A (incorporated by reference, *see* § 193.9);

(2) ACI 304R, ACI 318, ACI 376; API Spec 6D, API Std 620, API Std 625, API Std 650, API Std 2510; ASCE/SEI 7; ASME B31.1, ASME B31.3, ASME B31.4, ASME B31.5, ASME B31.8, ASME BPVC; ASNT SNT–TC–1A; ASTM E84, ASTM E136, ASTM E2652; Standards of the Brazed Aluminum Plate-Fin Heat Exchanger Manufacturers Association; CGA 341, CGA S–1.3; CSA B51, CSA C22.1; ISA 12.27.01; NFPA 13, NFPA 14, NFPA 15, NFPA 20, NFPA 22, NFPA 24, NFPA 30, NFPA 37, NFPA 51B, NFPA 54, NFPA 58, NFPA 59, NFPA 68, NFPA 70, NFPA 72, NFPA 85, NFPA 86, NFPA 101, NFPA 110, NFPA 274, NFPA 496, NFPA 750, NFPA 1225, NFPA 5000; and UL 723, as described by NFPA 59A (all incorporated by reference, *see* § 193.9); and

(3) Any other chapter or section of NFPA 59A (incorporated by reference, *see* § 193.9) required in this part.

(c) The use of NFPA 59A pursuant to paragraph (b) of this section shall be subject to the following exclusions:

(1) NFPA 59A sections 8.2.1.1.1; 8.4.7.2.6; 13.13.3; 15.5 (design, construction, and installation requirements therein only); 15.8.7; and 18.11.13.3.3.1.

(2) NFPA 59A section 16.8.8 and any other operations and maintenance requirements located in chapters and sections of NFPA 59A.

(3) References to ''approvals'' in NFPA 59A sections 8.2.1.1.1 and 8.4.7.2.6(3).

(d) PHMSA shall consider operators to be in full compliance with physical security requirements in this subpart on provision of documentation generated by the U.S. Coast Guard verifying compliance of Federal Energy Regulatory Commission (FERC)-certificated LNG import and export facilities only with the requirements of 33 CFR part 105, subparts C and D.

§ 193.203 Plant design—Wind speed.

Buildings, structures, and systems must have a basic design wind speed in compliance with NFPA 59A (incorporated by reference, *see* § 193.9) and the following:

(a) Buildings, structures, and systems that are either Classification A or B at FERC-certificated LNG import and export facilities must be designed to a wind speed based on a 10,000-year mean occurrence interval.

(b) All other buildings, structures, and systems must be designed to a wind

speed based on NFPA 59A and ASCE/SEI 7 (incorporated by reference, *see* § 193.9) as described by NFPA 59A.

§193.205 Vaporizers: Isolation valves.

Each manifolded vaporizer must have both inlet and outlet isolation valves.

§ 193.207 Impoundment structural requirements.

Each impoundment, in addition to pertinent requirements in NFPA 59A (incorporated by reference, *see* § 193.9), must be designed and constructed to prevent impairment of the reliability and structural integrity of the system after considering:

(a) The imposed loading from the impingement of the trajectory of an LNG jet discharged at any predictable angle.

(b) The erosive action from a spill, including jetting of spilling LNG, and any other anticipated erosive action including surface water runoff, ice formation, dislodgement of ice formation, and snow removal.

(c) If applicable, the potential impact and loading on the dike due to:

(1) The collapse of the component or item served or adjacent components; and

(2) If the LNG facility adjoins the right-of-way of any highway or railroad, collision by or explosion of a train, tank car, or tank truck that could reasonably be expected to cause the most severe loading.

§ 193.209 Water removal from impounding areas.

(a) Impoundment areas must be constructed and maintained such that all areas drain completely to prevent water collection. Drainage pumps and piping must be provided to remove water from collecting in the impoundment area.

(b) For rainfall amounts used in determining the adequacy of water removal system capacity, operators must use the Precipitation Frequency Data Server, accessible at *https://hdsc.nws.noaa.gov/pfds/.*

§ 193.211 Non-destructive examinations (NDE) for components with hazardous fluids.

The butt welds in metal shells of storage tanks with internal design pressure above 15 psig must be nondestructively examined in accordance with the ASME BPVC (incorporated by reference, *see* § 193.9), except that 100 percent of welds that are both longitudinal (or meridional) and circumferential (or latitudinal) of hydraulic load bearing shells with curved surfaces that are subject to cryogenic temperatures must be nondestructively examined in accordance with the ASME BPVC.

Subpart D—Permanent, Small-Scale LNG Facilities

§ 193.301 Small-scale LNG facilities.

Operators satisfying the eligibility criteria in chapter 17 of NFPA 59A (incorporated by reference, *see* § 193.9) may, instead of the requirements of subpart B of this part and §§ 193.201 and 193.401, comply with the entirety of the requirements in chapter 17.

Subpart E—Operations and Maintenance

§ 193.401 Scope.

(a) Operators must, in addition to the requirements of this subpart, comply with the operation and maintenance requirements within each of the following:

(1) NFPA 59A (incorporated by reference *see* § 193.9) section 4.6 (management of change), chapter 16 (Fire Protection, Safety, and Security); and chapter 18 (Operating, Maintenance, and Personnel Training);

(2) API 510, API RP 576; ASME B31.3; ASNT SNT–TC–1A; NB 23; NFPA 13, NFPA 14, NFPA 15, NFPA 20, NFPA 22, NFPA 24, NFPA 51B, NFPA 56, NFPA 68, NFPA 72, NFPA 101, NFPA 600, NFPA 750, and NFPA 1225, as described by NFPA 59A (all incorporated by reference, *see* § 193.9); and

(3) Any other chapter or section of NFPA 59A (incorporated by reference, *see* § 193.9) required by this part.

(b) The use of NFPA 59A pursuant to paragraph (a) of this section shall exclude NFPA 59A section 18.9.7 (Marine Shipping and Receiving) and any design, construction, installation, and initial testing requirements within NFPA 59A chapters 16 (Fire Protection, Safety, and Security) and 18 (Operating, Maintenance, and Personnel Training).

§ 193.403 Purging.

Each operator must, in addition to the requirements of NFPA 59A chapter 18 (incorporated by reference, *see* § 193.9), purge components that could accumulate significant amounts of combustible mixtures in accordance with the following requirements:

(a) Chapters 1, 2, and 6 in the American Gas Association Purging Manual, (incorporated by reference, *see* § 193.9); and

(b) Cleaning, drying, purging, and tightness testing must be conducted using an inert or nonflammable nontoxic medium or mechanical means unless another medium has been authorized only by special permit pursuant to § 190.341 of this subchapter.

§ 193.405 Communication systems.

Each operator of an LNG plant must, in addition to pertinent requirements in NFPA 59A (incorporated by reference, *see* § 193.9):

(a) Have a primary communication system that provides for oral communications between all operating personnel in the LNG plant.

(b) Have, for each LNG plant in excess of 264,000 gallons (1,000 liters) storage capacity, an emergency communication system that provides for oral communications between all persons and locations necessary for the orderly shutdown of operating equipment and the operation of safety equipment in time of emergency. The emergency communication system must be independent of and physically separated from the primary communication system and the security communication system under section 16.8.4 of NFPA 59A (incorporated by reference, *see* § 193.9).

§ 193.407 Maintenance procedures.

Each operator of an LNG facility must, in addition to pertinent requirements in NFPA 59A (incorporated by reference, *see* § 193.9):

(a) Include in the manual required by this subpart instructions enabling personnel who perform operation and maintenance activities to recognize conditions that potentially may be safety-related conditions that are subject to the reporting requirements of § 191.23 of this subchapter.

(b) Prepare and follow written repair procedures that provide safety of personnel and property during alteration or repair activity in accordance with this part and NFPA 59A chapter 18 (incorporated by reference, *see* § 193.9), which include procedures for the following:

(1) A technique, in addition to isolation valves, to ensure that the work area does not contain hazardous fluids, such as removing spool pieces or valves and blank flanging the piping, or double block and bleed valving; and

(2) De-energizing and locking out connected machinery and electrical equipment while repairs are being made.

§ 193.409 Personnel qualifications and training.

Each operator must, in addition to pertinent requirements in NFPA 59A (incorporated by reference, *see* § 193.9), ensure:

(a) Training records include, for each of their personnel, their name, job title,

and job responsibilities of each person, identification of tasks each person is trained to perform, the date(s) of current training for each of those tasks, and the training methods employed;

(b) All LNG facility personnel involved in operations and maintenance activity receive training to provide first-aid; and

(c) All LNG facility personnel involved in operations and maintenance activities, including immediate supervisors and contractors, must be trained to recognize and report safety related conditions that are subject to part 191 of this subchapter.

§ 193.411 Control systems for fire protection systems.

Each operator must, in addition to pertinent requirements in NFPA 59A (incorporated by reference, *see* § 193.9), inspect and test fire protection control systems at intervals not to exceed every six months.

§ 193.413 Physical security.

PHMSA shall consider operators to be in full compliance with physical security requirements in this subpart on provision of documentation:

(a) Generated by the U.S. Coast Guard verifying compliance of FERC-jurisdictional LNG import and export facilities only with the requirements of 33 CFR part 105, subparts C and D; or

(b) Generated by, or by agencies within, the Department of Homeland Security verifying compliance of any other facility with applicable content in regulations, security directives, or guidance related to the physical security of pipeline facilities issued pursuant to authority under the Aviation and Transportation Security Act, Public Law 107–71.

Subpart F—Risk-Based Operations and Maintenance

§ 193.501 Scope.

LNG facilities subject to the jurisdiction of the Federal Energy Regulatory Commission may establish a risk-based program pursuant to the requirements of this subpart as an alternative to operations and maintenance requirements of subpart E of this part other than those pertaining to the following:

(a) Physical security; and

(b) Emergency procedures governing coordination of emergency awareness and response actions by facility personnel and the public in sections 18.4.4, 18.4.5, 18.4.7, and 18.4.8 of NFPA 59A (incorporated by reference, see § 193.9).

§ 193.503 Program content requirements.

An operator electing this subpart must develop and follow a written program pursuant to the Center for Chemical Process Safety's Guidelines for Hazard Evaluation Procedures (incorporated by reference, *see* § 193.9) and containing the elements described in paragraphs (a) through (k) of this section:

(a) *Employee participation.* Operators shall provide for participation by their personnel and their representatives as required by this paragraph (a):

(1) Operators shall consult with their personnel and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management in this section.

(2) Operators shall provide to their personnel and their representatives access to process hazard analyses and to all other information required to be developed by this section.

(b) *Process safety information.* Operators shall compile written process safety information before conducting any process hazard analysis required by the section, including information pertaining to:

(1) Hazards of the hazardous fluids used or produced (*e.g.,* toxicity information; permissible exposure limits; physical data; reactivity data; corrosivity data; thermal and chemical stability data; and hazardous effects of inadvertent, reasonably foreseeable mixing);

(2) Technology of the process (*e.g.,* block flow diagrams; process chemistry; inventory limits; and evaluation of consequences from deviations); and

(3) Equipment in the process (*e.g.,* materials of construction; piping and instrumentation drawings; electrical classification; safety systems and their bases; ventilation system design; design codes and standards; material energy balances) along with documentation that equipment either:

(i) Complies with recognized and generally accepted good practices; or

(ii) In the case of existing equipment, was designed and constructed in accordance with codes, standards, or practices that are no longer in general use, but which the operator has determined and documented is designed, maintained, inspected, tested, and operating in a safe manner.

(c) *Process hazard analysis.* (1) The operator shall perform an initial process hazard analysis (PHA) on processes covered by this section. The PHA shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the event of an accidental release of hazardous fluids that could result in an incident. PHAs conducted in connection with FERC review of a certificate application for an LNG facility that meet the requirements of this paragraph (c) are acceptable as initial PHAs.

(2) Operators shall use one or more of the following PHA methods: What-If; checklist; HAZOP, FMEA; Fault Tree Analysis; or an appropriate equivalent.

(3) The PHA shall address the following: hazards of the processes employed; facility siting; identification of pertinent previous incidents; human factors; applicable design and administrative controls, along with the potential consequences of failure of those controls; and a qualitative evaluation of possible safety and health effects of failure of controls.

(4) The process hazard analysis shall be performed by a team with expertise in engineering and process operations, and the team shall include at least one employee who has experience and knowledge specific to the process being evaluated. Also, one member of the team must be knowledgeable in the specific process hazard analysis methodology being used.

(5) The operator shall establish a system to address the team's findings and recommendations promptly; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

(6) At least every 5 years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in paragraph (c)(4) of this section, to assure that the process hazard analysis is consistent with the current process.

(7) Operators shall retain process hazards analyses and updates or revalidations for each process covered by this section, as well as the documented resolution of recommendations described in paragraph (c)(5) of this section for the life of the process.

(d) *Operating procedures.* (1) The operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the

process safety information and shall address at least the following elements:

(i) Steps for each operating phase including initial startup; normal operations; abnormal operations; emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified personnel to ensure that emergency shutdown is executed in a safe and timely manner; emergency operations; cooldown; normal shutdown; and, startup following a planned shutdown, or after an emergency shutdown.

(ii) Operating limits, including consequences of deviation, and steps required to correct or avoid deviation.

(iii) Safety and health considerations including properties of, and hazards presented by, the hazardous fluids used in the process; precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment; control measures to be taken if physical contact or airborne exposure occurs; quality control for raw materials and control of hazardous fluid inventory levels; and any special or unique hazards.

(iv) Safety systems and their functions.

(2) Operating procedures shall be readily accessible to personnel who work in or maintain a process.

(3) The operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to facilities. The operator shall certify annually that these operating procedures are current and accurate.

(4) The operator shall develop and implement safe work practices to provide for the control of hazards during operations such as lockout/tagout; confined space entry; opening process equipment or piping; and control over entrance into a facility by maintenance, contractor, laboratory, or other support personnel. These safe work practices shall apply to operator and contractor personnel.

(e) *Training*—(1) *Initial training.* Operator personnel presently involved in operating a process, and personnel before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in paragraph (d) of this section. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks. In lieu of initial training for those personnel already involved in operating a process as of [EFFECTIVE DATE OF THE FINAL RULE], an operator may certify in writing that each of its personnel has the required knowledge, skills, and abilities to carry out safely the duties and responsibilities as specified in the operating procedures.

(2) *Refresher training.* Refresher training shall be provided at least every three years, and more often if necessary, to personnel involved in operating a process to assure that each understands and adheres to the current operating procedures of the process. The operator, in consultation with the personnel involved in operating the process, shall determine the appropriate frequency of refresher training.

(3) *Training documentation.* The operator shall ascertain that each of its personnel involved in operating a process has received and understood the training required by this paragraph (e). The operator shall prepare a record which contains the identity of each of its personnel, the date of training, and the means used to verify that the personnel understood the training.

(f) *Contractors*—(1) *Application.* This paragraph (f) applies to operations or maintenance activity performed by contractors on or adjacent to a covered process. It does not apply to contractors' provision of incidental services which do not influence process safety, such as janitorial, food and drink, laundry, delivery or other supply services.

(2) *Operator responsibilities.* (i) The operator, when selecting a contractor, shall obtain and evaluate information regarding the contractor's safety performance and programs.

(ii) The operator shall inform contract operators of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process.

(iii) The operator shall explain to contractor the applicable provisions of the emergency procedures required under subpart E of this part.

(iv) The operator shall develop and implement safe work practices consistent with this section, to control the entrance, presence and exit of contractors and contractor personnel in covered process areas.

(v) The operator shall ensure contractor personnel are trained in the work practices necessary to perform their jobs safely.

(vi) The operator shall ensure contractor personnel are instructed in the known potential fire, explosion, or toxic release hazards related to his/her job and the process, and the applicable provisions of the emergency action plan.

(vii) The operator shall ensure the contractor has documented that each of its personnel has received and understood the training required by this paragraph (f), and has prepared a record which contains the identity of its personnel, the date of training, and the means used to verify that each of its personnel understood the training.

(viii) The operator shall assure that all contractor personnel follow the safety rules of the facility including the safe work practices required under this section.

(ix) The operator shall ensure that the contractor advises it of any unique hazards presented by the contractor personnel's work, or of any hazards found by the contractor personnel's work.

(g) *Pre-startup safety review.* (1) The operator shall perform a pre-startup safety review for new facilities and for modified facilities when the modification requires a change in the process safety information.

(2) The pre-startup safety review shall confirm that prior to the introduction of hazardous fluids to a process:

(i) Construction and equipment is in accordance with design specifications;

(ii) Safety, operating, maintenance, and emergency procedures are in place and are adequate;

(iii) For new facilities, a process hazard analysis has been performed and recommendations have been resolved or implemented before startup; and modified facilities meet the management of change requirements contained in paragraph (k) of this section.

(iv) Training of personnel involved in operating a process has been completed.

(h) *Mechanical integrity*—(1) *Application.* Paragraphs (h)(2) through (5) of this section apply to the following process equipment:

(i) Pressure vessels and storage tanks;

(ii) Piping systems (including piping components such as valves);

(iii) Relief and vent systems and devices;

(iv) Emergency shutdown systems;

(v) Controls (including monitoring devices and sensors, alarms, and interlocks); and

(vi) Pumps.

(2) *Written procedures.* The operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.

(3) *Training for process maintenance activities.* The operator shall train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the personnel's job tasks to

assure that personnel can perform the job tasks in a safe manner.

(4) *Inspection and testing.* (i) Inspections and tests shall be performed on process equipment.

(ii) Inspection and testing procedures shall follow recognized and generally accepted good engineering practices.

(iii) The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

(iv) The operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

(5) *Equipment deficiencies.* The operator shall correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in paragraph (b) of this section) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

(i) *Hot work permit.* (1) The operator shall issue a hot work permit for hot work operations conducted on or near a covered process.

(2) The permit shall document that the fire prevention and protection requirements in this part have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work; and identify the object on which hot work is to be performed. The permit shall be kept on file until completion of the hot work operations.

(j) *Management of change.* (1) The operator shall establish and implement written procedures to manage changes (except for ''in-kind'' replacements) to process chemicals, technology, equipment, and procedures; and, changes to facilities that affect a covered process.

(2) The procedures shall assure that the following considerations are addressed prior to any change:

(i) The technical basis for the proposed change;

(ii) Impact of change on safety and health;

(iii) Modifications to operating procedures;

(iv) Necessary time period for the change; and,

(v) Authorization requirements for the proposed change.

(3) Operator personnel involved in operating a process and maintenance and contractor personnel whose job tasks will be affected by a change in the process shall be informed of, and trained in, the change prior to start-up of the process or affected part of the process.

(4) If a change covered by this paragraph (j) results in a change in the process safety information required by paragraph (b) of this section, such information shall be updated accordingly.

(5) If a change covered by this paragraph (j) results in a change in the operating procedures or practices required by paragraph (d) of this section, such procedures or practices shall be updated accordingly.

(k) *Compliance audits.* (1) Operators shall certify that they have evaluated compliance with the provisions of this section at least every three years to verify that the procedures and practices developed under this section are adequate and are being followed.

(2) The compliance audit shall be conducted by at least one person knowledgeable in the process.

(3) A report of the findings of the audit shall be developed.

(4) The operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected

(5) Operators shall retain the two (2) most recent compliance audit reports.

§ 193.505 Implementation plans.

(a) Operators electing this subpart shall submit for PHMSA review and approval pursuant to implementation plans under § 190.9 of this subchapter, copying the Federal Energy Regulatory Commission, the Department of Homeland Security, and each cognizant Coast Guard Captain of the Port (COTP). PHMSA shall review, and either deny or approve, each plan within 30 calendar days from receipt; plans not approved within 30 days shall be deemed denied.

(b) Implementation plans shall set forth, on a process-by-process, system-by-system, or an organization-by-organization basis, intermediate and final milestones specifying work streams and dates for an operator's transition to compliant operations and maintenance programs under this subpart.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Paul Roberti,

Administrator.

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 486

Medicare and Medicaid Programs; Organ Procurement Organizations Conditions for Coverage: Revisions to the Conditions for Coverage; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 486

[CMS–3409–F]

RIN 0938–AU54

Medicare and Medicaid Programs; Organ Procurement Organizations Conditions for Coverage: Revisions to the Conditions for Coverage

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule revises the Conditions for Coverage for Organ Procurement Organizations (OPOs) to clarify outstanding procedural questions and provide additional operational flexibility for OPOs to achieve high performance resulting in the successful procurement, distribution, and transplantation of more life-saving organs. This rule revises definitions, revises the designation requirements for OPOs, clarifies when an OPO's service area is open for competition, and updates the process for appeals. We are committed to holding all OPOs accountable for their performance and this final rule does not revise the focus on improving the volume of donors and transplants assessed in the outcome measures or the tier structure used for re-certification and de-certification of OPOs.

DATES: These regulations are effective on January 4, 2027.

FOR FURTHER INFORMATION CONTACT: The Clinical Standards Group, (410) 786–6633, *HealthandSafetyInquiries@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary and Severability

A. Executive Summary

1. Purpose

At any given time, at least 100,000 people are on the waiting list for a lifesaving transplant and every 8 minutes, another person is added to the transplant waiting list.[1] Many individuals on the organ transplant waiting list will wait several years for a suitable donor, while others will die before an organ becomes available. A variety of factors affect wait times for an organ transplant, including how well a waitlisted individual matches with available donors, how sick the person is, and the availability of organs in the region. Despite continued growth in organ donation, procurement, and transplantation, the need for transplantable organs continues to grow. The success of organ procurement organizations (OPOs) in performing their essential functions (obtaining consent for donation, working with the Organ Procurement and Transplantation Network (OPTN) to match organs with recipients, procuring viable organs, and delivering those organs in transplantable condition to their recipients) is a rate limiting factor on the success of the entire organ transplant system. Therefore, optimal performance of OPOs is critical to ensure that the maximum possible number of transplantable human organs are available to the yearly average of more than 100,000 seriously ill people on waiting lists for a lifesaving organ transplant.

In 2019, President Trump issued Executive Order 13879 ''Advancing American Kidney Health,'' directing the Secretary to enhance the procurement and utilization of organs available through deceased donation and to establish more transparent, reliable, and enforceable metrics for evaluating an OPO's performance. In response, CMS published the final rule, ''Medicare and Medicaid Programs; Organ Procurement Organization Conditions for Coverage: Revisions to the Outcome Measure Requirements for Organ Procurement Organizations'' in 2020 (85 FR 77898, referred to hereafter as the December 2020 OPO final rule), which, among other changes, revised the previous outcome measures to drive performance improvement and increase the number of transplantable organs. OPOs are evaluated on their performance on both the donor and transplantation measures. Since publishing the December 2020 OPO final rule, CMS has received many inquiries from OPOs and others seeking clarification on operational and administrative elements. These inquiries increased in frequency and volume as the system moved closer to the end of the 2022–2026 re-certification cycle. Therefore, CMS published a proposed rule, ''Medicare and Medicaid Programs; Organ Procurement Organization Conditions for Coverage: Revisions to the Outcome Measure Requirements for Organ Procurement Organizations'' on January 30, 2026 (91 FR 4190, hereinafter referred to as the January 2026 OPO proposed rule).

The proposed rule contained operational and administrative provisions which would govern the competition process, provide programmatic clarity, and address interested party requests for additional guidance. Additionally, the proposed rule contained provisions aimed at driving further quality and improvement in OPO operations, reflecting our continued commitment to enhancing the organ procurement and transplant system, and better serving prospective organ donors, their families, and patients on the transplant waitlist.

B. Severability

To the extent a court may enjoin any part of the rule, the Department intends that other provisions or parts of provisions should remain in effect. Any provision of this rule held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to continue to give maximum effect to the provisions as permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this rule and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

C. Summary of Costs and Benefits

This final rule is important due to its functional relationship to the December 2020 OPO final rule. Its purpose is to clarify and refine operational and administrative requirements related to OPO designation, re-certification, competition, appeals, information management, and Quality Assessment and Performance Improvement (QAPI), while maintaining the accountability framework established in the December 2020 OPO final rule.

We estimate that this final rule will cost approximately $16.5 million in the first year and $7.9 million annually thereafter. These costs are incremental to the broader framework established in the December 2020 OPO final rule and reflect targeted operational and administrative refinements rather than fundamental system restructuring. We also estimate that this final rule will result in approximately $598,000 in annual benefits due to reduced implementation inquiry and compliance-interpretation burden, as well as an additional one-time benefit associated with clarified requirements and implementation efficiencies.

[1] Organ Donation Statistics. *https://www.organdonor.gov/learn/organ-donation-statistics.* Accessed on April 29, 2025.

II. Organ Procurement Organizations (OPOs)

A. Background

OPOs are vital partners in the procurement, distribution, and transplantation of human organs in a safe and effective manner for all potential transplant recipients. The role of OPOs is critical to ensuring that the maximum possible number of transplantable human organs are available to individuals with organ failure who are on a waiting list for an organ transplant. Section 371(b) of the Public Health Service (PHS) Act sets out certain requirements for OPO certification. There are currently 54 OPOs that are responsible for identifying patients who may become prospective donors and recovering organs from deceased donors in the United States (U.S.). These 54 OPOs currently serve 55 Donation Service Areas (DSAs), because each OPO serves at least one DSA and one OPO currently serves more than one DSA. The Centers for Medicare & Medicaid Services (CMS) views OPO performance as a critical element of the organ transplantation system in the U.S. We established conditions for coverage (CfCs) for OPOs at 42 CFR part 486, subpart G, and OPOs must meet these requirements for their organ procurement costs to be eligible for payment under the Medicare and Medicaid programs. The CfCs include reliable, data-based outcome measures related to donor and transplant volume that are used to assess OPO performance for Medicare certification and re-certification purposes and a three-tier structure that incentivizes high OPO performance on these outcome measures. In general, we are committed to using objective data to assess OPO performance and continuously incentivize OPO performance improvement.

In 2025, there were a total of 49,065 organ transplants, compared to 48,150 and 46,634 transplants in years 2024 and 2023, respectively.[2] Although the volume of transplants has increased over time, there continues to be an ongoing shortage of transplantable organs. At any given time, at least 100,000 people are on the waiting list for a lifesaving organ transplant.[3] Many people face tremendous quality of life burdens, illness progression, or death while on the waiting list. An OPO that is efficient in procuring organs and delivering them to recipients will help more people on the waiting list receive lifesaving organ transplants and reduce the waiting time, which could ultimately save more lives and improve health outcomes.

B. Regulatory History

The December 2020 OPO final rule (85 FR 77898) revised the OPO CfCs with the policy goal of increasing organ donation and transplantation to better serve patients on the organ transplant waiting list. The December 2020 OPO final rule revised the outcome measures that are used to assess OPO compliance for purposes of certification, shifting from heavily risk-adjusted metrics that were not capable of demonstrating changes in OPO performance to metrics that measure OPO volume and drive OPO performance in areas most important to patients on the transplant waiting list. It also revised the assessment criteria to move from a bifurcated pass/fail system to a three-tier system with dynamic performance thresholds and incentives for achieving the highest level of performance. Finally, the December 2020 OPO final rule utilizes increasing competition to drive performance improvement. An OPO's performance in its DSA(s) is ranked in comparison to the performance of all other OPOs in their assigned DSAs relative to a numerical threshold, using competition for higher ranking as a tier 1 as an incentive for performance improvement. We believe that the absence of meaningful competition contributed to the very slow pace of system improvement prior to CMS initiating its OPO regulatory reform efforts in 2019, culminating with publication of the December 2020 OPO final rule.

On February 2, 2021, we published a notice in the **Federal Register** (86 FR 7814) temporarily delaying the effective date of the December 2020 OPO final rule by 60 days and providing an additional 30-day public comment period, during which we received over 150 timely public comments. The comments received included both support for immediate implementation of the December 2020 OPO final rule and requests for additional time before implementation. We considered the additional public comments and the rule subsequently became effective on March 30, 2021.

On December 3, 2021, we published a ''Request for Information (RFI); Health and Safety Requirements for Transplant Programs, Organ Procurement Organizations, and End-Stage Renal Disease (ESRD) Facilities'' (86 FR 68594) (''December 2021 RFI''), which solicited comments that would help to inform potential changes that would create system-wide improvements, including improvements in organ donation, organ transplantation, quality of care in dialysis facilities, and access to dialysis services.

We received almost 400 timely comments in response to the December 2021 RFI. Commenters included transplant recipients, those awaiting transplants, donor families, and donor representatives. A range of health care providers, including donor hospitals, transplant programs, ESRD suppliers, hospital systems, OPOs, and tissue banks; researchers and academic institutions; professional organizations; trade groups such as technology and pharmaceutical companies as well as insurers; and advocacy and philanthropic organizations also provided comments. These comments informed the proposed rule and may be used in future rulemaking for system-wide changes to advance organ transplant system performance.

On January 30, 2026, we published the January 2026 OPO proposed rule (91 FR 4190). In the rule we proposed to: revise several definitions; remove the requirement that an OPO have been re-certified from 2002 through 2005 to be eligible for certification; revise the designation framework to account for scenarios where an OPO is designated to more than one DSA and clarify when DSAs are open for competition; clarify and categorize actions affecting OPO agreements, including non-renewal and de-certification; revise the appeal process; refine re-certification and competition policies, including evaluating each DSA separately for outcome measures and an OPO as a single entity for process performance; address OPO accountability on outcome measures when taking over another OPO's DSA; require appropriate staff licensure; expand information management requirements to include records for organs procured for research; and add new Quality Assessment and Performance Improvement (QAPI) requirements related to medically complex donors and organs.

C. Statutory and Regulatory Provisions

To be an OPO, an entity must meet the applicable requirements of both the Social Security Act (the Act) and the PHS Act. Section 1138(b) of the Act provides the statutory qualifications and requirements that an OPO must meet for its organ procurement costs to be paid under the Medicare program or the Medicaid program. Section 1138(b)(1)(A) of the Act specifies that

[2] Organ Procurement and Transplantation Network (OPTN) Data. *https://hrsa.unos.org/data/view-data-reports/national-data/*. Accessed May 12, 2026.

[3] Organ Donation Statistics. *https://www.organdonor.gov/learn/organ-donation-statistics.* Accessed May 12, 2026.

payment may be made for organ procurement costs only if the agency is a qualified OPO operating under a grant made under section 371(a) of the PHS Act or has been certified or re-certified by the Secretary of the Department of Health and Human Services (the Secretary) as meeting the standards to be a qualified OPO, as described in section 371(b) of the PHS Act, within a certain time period. Section 1138(b)(1)(C) of the Act provides that payment may be made for organ procurement costs only if the OPO meets the performance-related standards prescribed by the Secretary. Section 1138(b)(1)(F) of the Act requires that to receive payment under the Medicare or Medicaid programs for organ procurement costs, the entity must be designated by the Secretary. The requirements for such designation are set forth in § 486.304 and include being certified as a qualified OPO by CMS. Regulations at § 486.303 address the requirements to be certified as a qualified OPO.

Pursuant to section 371(b)(1)(D)(ii)(II) of the PHS Act, the Secretary is required to establish outcome and process performance measures for OPOs to meet based on empirical evidence, obtained through reasonable efforts, of organ donor potential and other related factors in each service area of the qualified OPO. Section 1138(b)(1)(D) of the Act requires an OPO to be a member of, and abide by the rules and requirements of, the OPTN. OPOs must also comply with the regulations governing the operation of the OPTN (42 CFR part 121). The Department of Health and Human Services (HHS) has explained that only those OPTN policies approved by the Secretary as enforceable will be considered ''rules and requirements'' of the OPTN for purposes of section 1138 of the Act.[4] The OPTN is a membership organization that oversees the U.S. organ transplant system, links all professionals in the U.S. organ procurement and transplantation system, and maintains a national registry for matching donated organs with recipients in need of transplantation. OPOs are required under OPTN regulations (§ 121.11(b)(2)) and § 486.328 of the OPO CfCs to report information specified by the Secretary to the OPTN, including the data used to calculate the outcome measures for OPOs.

In addition, OPOs are required to comply with existing Federal civil rights laws, including Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d, section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, section 1557 of the Affordable Care Act, 42 U.S.C. 18116, and the Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq*.[5] Title VI protects individuals from discrimination on the basis of race, color, and national origin. Section 1557 of the Affordable Care Act protects individuals from discrimination on the basis of race, color, national origin, age, disability, or sex. Among other things, these laws require OPOs to ensure nondiscrimination on the bases protected in the operation of their programs. Also, section 504 of the Rehabilitation Act and section 1557 of the Affordable Care Act protect qualified individuals with a disability, including prospective organ recipients with a disability and prospective organ donors with a disability, from discrimination in the administration of covered organ transplant programs. Under these laws, OPOs must ensure that qualified individuals with disabilities are afforded opportunities to participate in or benefit from the organ donation programs that are equal to opportunities afforded to others. Furthermore, OPOs and transplant teams risk violating these Federal civil rights laws through discriminatory actions during the organ donation process. Such violations may include providing a prospective donor with a disability with a benefit or service that is not as effective as the benefits or services provided to those prospective donors without a disability, based solely on that disability.

Qualified individuals with disabilities are also entitled to reasonable modifications needed to participate in and benefit from a program, as well as appropriate auxiliary aids and services needed for effective communication. These rights extend in some circumstances to companions of a prospective organ donor or recipient. For example, covered health care providers and organ donation programs are required to provide auxiliary aids and services (including sign language interpreters) when necessary for effective communication between a relative involved in a prospective donor or recipient's care and a health care provider or procurement program.

Section 1102 of the Act gives the Secretary the authority to make and publish such rules and regulations as may be necessary for the efficient administration of the functions with which the Secretary is charged under the Act. Moreover, section 1871 of the Act gives the Secretary broad authority to establish regulations that are necessary to carry out the administration of the Medicare program.

We established CfCs for OPOs at 42 CFR part 486, subpart G. These regulations set forth the certification and re-certification processes, outcome requirements, and process performance measures for OPOs. The outcome measures, found under § 486.318, are used to assess OPO outcome performance for re-certification and competition purposes (see § 486.316(a) and (d)).

III. Summary of the Proposed Provisions and Responses to Public Comments

In response to the January 2026 OPO proposed rule, we received 129 timely pieces of correspondence. Commenters included individual OPOs, transplant hospitals, national associations and coalitions, academic researchers, advocacy organizations, health care professionals and corporations, donor families, and numerous individuals from the general public.

In this final rule, we provide a summary of each proposed provision, a summary of the public comments received and our responses to them, and an explanation for any changes in the policies that we are finalizing. We note that this final rule is written in order by topic as they appear in the regulations.

A. General Comments

Comment: Most commenters supported CMS' overarching goals of strengthening safety, accountability, and public trust in the organ donation and transplantation system. A commenter stated that the recent increase in organ procurement demonstrates the effectiveness of increased accountability under the 2020 framework. However, some commenters expressed concerns about whether the proposed rule would drive meaningful improvement and recommended that CMS provide greater clarity regarding certain proposals.

Response: We believe the proposals we are finalizing will enforce accountability in organ procurement and support broader goals of improving patient safety and transparency in the organ procurement and transplantation system. We have reviewed the proposals and, where appropriate, have revised or clarified provisions in this final rule to better reflect the intent of the underlying policy and to support effective implementation. These revisions are discussed in detail in the

[4] 54 FR 51802.

[5] Recipients of Federal financial assistance must comply with applicable Federal civil rights laws, including but not limited to Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and section 1557 of the Affordable Care Act.

relevant sections later in this section of the preamble.

Comment: Many commenters expressed concern that the proposed rule does not adequately address their longstanding concerns with the 2020 Final Rule, particularly with respect to the outcome measures. Specifically, commenters stated that the outcome metrics: (1) do not reliably or accurately assess the comparative performance of OPOs, noting that the donation and transplantation measures are calculated using the same denominator; (2) are biased against large OPOs; (3) fail to account for demographic and geographic differences across service areas; (4) evaluate OPOs based on factors outside their control; and (5) are calculated using data that does not accurately estimate donor potential and contains errors. Commenters also expressed concern that significant fluctuations in the data confirm that a 12-month measurement period is insufficient as a basis for CMS' outcome metric calculations. Commenters recommended that CMS replace the tiering system with an Observed-to-Expected (O/E) model; replace the use of cause, age, and location consistent with organ donation (CALC) methodology and death certificate data with hospital referral data, include risk adjusted outcome measures; and use multi-year measurement periods.

Response: The comments regarding the type of outcome measures that CMS uses, risk adjustment, data sources, and the number of data years used for assessing compliance with the CfCs, all set forth in the December 2020 OPO final rule, are outside the scope of this final rule, which is intended to clarify and refine CMS policies and processes for implementing the accountability framework established in the December 2020 OPO final rule. While we proposed a regulatory refinement that will affect the outcome measures as it relates to the inclusion of pancreata used for islet cell research in those calculations, we did not propose any changes to the type of outcome measures that CMS uses, risk adjustment of those measures, data sources, or the number of data years used for assessing compliance with the CfCs. We stand by the underlying outcome measure framework set forth in the December 2020 OPO final rule.

Comment: Commenters stated that the current tiered system creates perverse incentives for OPOs to prioritize increasing donation and transplant rates over patient-centered care and ethical decision-making.

Response: Procuring organs from donors in a safe, ethical, and transparent manner supports performance on the CMS outcome measures. Research has shown that approaching potential donor families with sensitivity and compassion, providing adequate explanations of brain death, and allowing potential donor families sufficient time to make decisions all support higher donation rates.[6] By extension, we believe that OPOs that do not engage in patient-centered care and violate the CfCs (for example, pressuring next of kin for consent for organ donation) ultimately harm their own performance and that of the entire transplant system as these practices contribute to public mistrust in the system. CMS policies holding OPOs accountable for their outcomes, thereby increasing the number of lifesaving organs available for transplantation, are not responsible for poor OPO decision making. Additionally, under the process measures, an OPO is responsible for ensuring proper training and supervision of its staff (§ 486.326(c)) and otherwise maintaining compliance with process performance requirements at §§ 486.320 through 486.360 and should never jeopardize the health and safety of potential donors in the interest of bolstering its performance.

Comment: Several commenters stated that CMS would de-certify and replace an unreasonable number of OPOs, potentially disrupting the organ donation and transplantation system. They emphasized that stability is critical to maintaining relationships with donor families and hospital partners and to ensuring that organs are not lost due to operational disruption. They recommended that CMS prioritize sustainable performance improvement strategies such as technical assistance and corrective action plans and establish alternative pathways for remediation and performance improvement as a means of avoiding de-certification and minimizing disruption to the system. Commenters stated these options would enable a cure for any non-compliance, be less burdensome than an appeal, and provide a collaborative resolution-focused approach that would better serve patients.

Response: We disagree with the commenters' premise that prioritizing system stability and retaining current OPOs in their low performing DSAs is preferable to replacing these low performers with OPOs that have demonstrated better performance. The outcome measures and tier system are designed such that all OPOs have an equal opportunity to succeed. OPO performance in a DSA is measured against the median observed performance level of the previous year, meaning that each OPO begins each assessment period with a blank slate and need only achieve the performance level of the previous year's median. All OPOs are capable of meeting the previous year's median performance level in their DSAs and it is our intent to drive improved performance across all OPOs to the extent that the minimum performance standard is met in every DSA, and, ultimately, to save more lives.

We appreciate commenters' recommendations to establish alternative remediation pathways prior to de-certification. These pathways already exist and are required by regulation. Section 486.348(d) requires OPOs to identify and address performance deficiencies that might lead to regulatory action (that is, de-certification). The performance of each OPO is assessed annually, and this information is provided to each OPO. OPOs are required to evaluate their outcome measure performance through their Quality Assessment and Performance Improvement (QAPI) programs and implement corrective actions when performance falls statistically significantly below the top 25th percentile during an assessment period. As such, lower performing OPOs are already expected to develop plans to correct their actions in ways that improve performance and ultimately meet the minimum CMS performance standards. In addition, for the 2022–2026 certification cycle, CMS provided direct technical assistance to OPOs through the OPO Special Innovation Project (SIP), conducted by CMS-funded Quality Improvement Organizations (QIOs) from December 2023 through March 2025, and facilitated OPO collaboration through the ESRD Treatment Choices Learning Collaborative.

OPOs may remedy non-compliance with the process performance measures at §§ 486.320 through § 486.360 by submitting an acceptable plan of correction to CMS (see § 488.28) and implementing corrective actions to achieve and sustain compliance. However, there is no opportunity to remedy past failure to meet the minimum standards for compliance with the outcome measures at § 486.318 because those standards are based on OPO performance in the final assessment period of the re-certification cycle. Actions taken after the final

[6] Rodrigue JR, Cornell DL, Howard RJ. Organ donation decision: comparison of donor and nondonor families. Am J Transplant. 2006 Jan;6(1):190–8. doi: 10.1111/j.1600–6143.2005.01130.x. PMID: 16433774; PMCID: PMC2365918.

assessment period cannot cure the OPO's failure to meet the outcome measure standards as set forth at § 486.318. As discussed previously in this final rule, OPOs have an opportunity to address performance deficiencies in advance of the final assessment period as set forth in § 486.348(d).

We did not propose to modify the outcome measure performance standards to allow for alternative pathways to compliance, and any suggestions to that effect are outside the scope of this rule. Furthermore, as we explained in the December 2020 OPO final rule, allowing a poorly performing OPO to continue serving the DSA through a systems improvement agreement or similar mechanism would not benefit the patients in that DSA who would be better served by a higher performing OPO (85 FR 77912). OPOs that do not meet the outcome measures in a DSA in the final assessment period will either be de-certified under the requirements of § 486.312(a)(2) or (3) or have designation removed from the DSA if it has more than one DSA as specified at § 486.316(a)(3).

While we agree with commenters that system stability is a factor for consideration, we also note that such stability led to stagnation in performance. We do not agree with the premise that replacing a low performing OPO with a higher-performing OPO that is willing and able to provide those services will result in long term system disruptions that decrease donation and transplantation or otherwise disrupt the overall accelerated progress that the system has made in light of increased oversight. Retaining an OPO in a DSA where it has failed to meet CMS regulatory standards would not best serve the people in that DSA or the system at large. We are committed to ensuring that any transition between OPOs is conducted in a manner that minimizes disruption to organ procurement activities.

We also note that Health Resources and Services Administration (HRSA) and the OPTN continue to provide resources and technical support to assist OPOs in improving performance and strengthening organ procurement and transplantation practices.

Comment: Commenters raised concerns regarding the timing of the proposed rule in relation to the 2022 through 2026 re-certification cycle. Many commenters requested that CMS refrain from issuing de-certification notices or conducting competitions and instead develop a revised re-certification process that more accurately and fairly measures OPO performance or delay implementation to allow time to assess the impact of new requirements on OPO performance. Some commenters stated that any finalized policies should not be applied to the 2022 through 2026 re-certification cycle, noting that OPOs cannot retroactively adjust past performance to comply with new standards. Several commenters requested clarity in when changes to the definitions would become effective. Some commenters expressed concerns that CMS would apply the changes retroactively.

Response: The January 2026 OPO proposed rule, and this subsequent final rule, seek to address operational questions that CMS has received from interested parties and provide additional detail on how the policies adopted in the December 2020 OPO final rule will be effectuated. CMS will not retroactively apply these provisions to any OPO, but will apply them prospectively, as of the effective date of this final rule, in effectuating the enforcement framework adopted in the December 2020 OPO final rule. While we proposed and are finalizing a change to the definition of ''organ'', which has implications for how the transplantation rate outcome measure will be calculated and reported to OPOs, this change will only apply as a regulatory requirement to outcome measure data reporting after the effective date of this final rule, beginning with the 2027 assessment period (as defined in § 486.302). In addition, we note that in assessing OPO performance in 2027, we will take steps to ensure OPO performance is appropriately and accurately compared to 2026 performance based on the updated definition of ''organ.'' Data from the 2027 assessment period will be used to calculate performance described in the 2029 OPO Public Performance Report. OPO performance in 2027 will be measured against the median and top 25 percent thresholds set by OPO performance in 2026. To ensure that 2027 performance is appropriately measured against 2026 performance, for purposes of the 2029 OPO Public Performance Reports we will recalculate the median and top 25 percent thresholds for 2026 applying the revised definition of ''organ'' that excludes pancreata used for islet cell research and not transplanted from the transplantation rate. This recalculation will model what the transplantation rate outcome measure performance would have been in 2026, had the revised definition been effective at that time. This will ensure a comparison of like data sets, establish an accurate and consistent performance threshold for the 2027 performance data to be measured against, and ensure that OPOs are not evaluated against 2026 performance data that include a broader range of procured organs in the transplantation rate. Therefore, the 2029 OPO Public Performance Report, based upon the 2027 assessment period performance data evaluated against recalculated 2026 performance thresholds for the transplantation rate, will provide OPOs with accurate information about their performance. We will continue applying the revised definition to future outcome measure calculations.

We note that the data reported by OPOs and the coding guidance that they use to perform this data reporting will not change when the revised definition of ''organ'' is applied to the organ transplantation rate. Existing data coding practices, as required by the OPTN (consistent with § 486.328) already support CMS' ability to calculate performance on the organ transplantation rate outcome measure with and without pancreata used for islet cell research. What will change is how CMS selects the organ disposition codes that OPOs and transplant programs already enter into the data reporting system and applies those codes to the organ transplantation rate calculation.

Likewise, OPOs will not be required to comply with changes to the CfCs finalized in this rule, such as changes to address situations in which a single OPO is simultaneously designated to more than one DSA, until the effective date of this final rule. As some commenters noted, OPO performance for the 2022 through 2026 re-certification cycle is already complete. Given that the policies finalized in this rule will not impact OPO performance for the 2022 through 2026 re-certification cycle, there is no need to delay enforcement decisions for that cycle to assess any impact of this rule on OPO performance.

Comment: Several commenters stated that the proposed rule placed disproportionate emphasis on OPO performance without adequately accounting for the roles of other interested parties in the donation and transplant system. They stated that greater shared accountability is needed across OPOs, donor hospitals, and transplant centers, including improved transparency around transplant center acceptance practices and better alignment of performance expectations across the system.

Response: We agree that organ transplantation is a system that includes many actors, each performing their essential functions to the best of their

ability. Coordination and collaboration among OPOs, donor hospitals, and transplant centers are important to supporting timely organ recovery, placement, and transplantation. We will consider these comments for potential future rulemaking for other related members of the organ donation and transplantation ecosystem.

Comment: Several commenters suggested that CMS issue guidance prior to implementation. They encouraged CMS to continue interested parties' engagement and collaborate with HRSA and OPTN to ensure alignment and avoid duplicative or conflicting regulatory requirements.

Response: We appreciate the commenters' suggestions, and we intend to continue working closely with HRSA and the OPTN to avoid duplicative or conflicting regulatory requirements. We will provide guidance through sub-regulatory channels, including updates to the State Operations Manual (SOM), to support compliance with these requirements.

Comment: CMS received several comments pertaining to issues that are outside the scope of the proposed rule. Those comments concerned transplant program outcome measures/harmonizing outcome measures, inclusion of new risk-adjusted outcome measures, harmonization of Federal requirements with State anatomical gift laws, donor registry enrollment and informed consent, the intersection between donation after circulatory death (DCD) processes and first-person authorization (FPA), public education regarding clinical processes associated with organ donation, including DCD, revising the definition of organ to include lifesaving tissue, clearer authorization communication requirements, the use of a DNA-authenticated blockchain system to secure the organ transplant process, a requirement to make all patient records available to a potential donor's next of kin, and donor care units/organ recovery centers.

Response: We thank the commenters for their feedback. However, these issues are outside the scope of the final rule.

B. Definitions (§ 486.302)

We proposed to revise our current regulations defining the terms ''adverse event,'' ''donor,'' ''medically complex donors,'' ''medically complex organs'', ''organ,'' and ''unsound medical practices'' at § 486.302 to provide greater clarity.

1. General Comments

Comment: Commenters urged CMS to test any new definitions more thoroughly to assess downstream effects on measures and re-certification decisions.

Response: We have carefully considered the impact of these definition changes on the meaning and application of the regulations where these terms are used, as well as public comments we received on these proposed changes. The changes are prospective in nature and OPOs are expected to comply with them upon the effective date of this final rule. We do not expect significant downstream effects on measures and re-certification decisions as a result of any definition changes finalized in this rule. For example, we conducted an internal analysis based on preliminary data used for the 2026 OPO report to assess the projected impact of revising the definition of ''organ'' to exclude pancreata used for islet cell research from the organ transplantation rate and noted minimal effects on OPO tier status. We expect similarly minimal effects on OPO tier status when this change takes effect. In addition, the change to the definition of organ is appropriate to meet our regulatory goals of incentivizing organ transplants while complying with the requirements of the Pancreatic Islet Cell Transplantation Act of 2004 (PICTA 2004).

Comment: Some commenters recommended that any definitions should be aligned or harmonized with OPTN and HRSA definitions to promote consistency in interpretation and implementation of requirements. A few commenters noted that OPTN and HRSA are working on revising various requirements that could affect proposed changes to definitions.

Response: CMS and HRSA continually work to align policies as appropriate to the statutory authorities that govern our actions and the regulatory approaches that we employ. We note that ''alignment'' does not always require exact duplication, as there are instances when a compatible, nuanced approach is better suited to addressing an issue than a broad, standardized approach. Currently, the OPTN does not have a comprehensive, standardized definition for ''adverse events.'' However, the OPTN does require that a narrow set of high-severity patient safety events (''HRSA-reportable'' or ''Wakefield'' events) be reported to HRSA and to the OPTN Patient Safety Reporting Portal. Those events include: (1) wrong organ transplants or near misses, (2) transplants into the wrong recipient or near misses, and (3) suspected or confirmed donor-derived HIV transmission.[7] Our current definition of ''adverse event'' is broad enough to encompass the OPTN and HRSA requirements for reportable events. Additionally, alignment of requirements is one factor that CMS considered related to the proposed definitions for medically complex organ and medically complex donor. Please see section III.B.4. of this final rule for additional discussion.

2. Adverse Event

Section 486.302 currently defines ''adverse event'' as ''an untoward, undesirable, and usually unanticipated event that causes death or serious injury or the risk thereof. As applied to OPOs, adverse events include, but are not limited to, transmission of disease from a donor to a beneficiary, avoidable loss of a medically suitable potential donor for whom consent for donation has been obtained, or delivery to a transplant center of the wrong organ or an organ whose blood type does not match the blood type of the intended beneficiary.'' We proposed to relocate the illustrative examples of adverse events from the definition of ''adverse event'' to the QAPI requirements at § 486.348(c). We also proposed revising the list to clarify that the list of examples does not constitute an exhaustive list of adverse events. We solicited public comment on the proposed changes to the definition of adverse events. The following is a summary of the comments we received and our responses.

Comment: Commenters stated that the proposed definition of ''adverse events'' was overly broad, ambiguous, and susceptible to inconsistent interpretation by both OPOs and surveyors. They expressed concern that legitimate disagreements between the OPO and a surveyor on whether an incident was an adverse event could result in inappropriate and inconsistent deficiency determinations and other inconsistent enforcement actions, which would limit the QAPI requirements' usefulness as a quality improvement tool.

Response: While we proposed to move a revised, non-exhaustive list of examples of adverse events from the definitions section to the QAPI section at § 486.348(c)(3), we note that the

[7] Organ Procurement and Transplantation Network. OPTN Policies, 18.5 Reporting of Patient Safety Events. Accessed at *https://www.hrsa.gov/sites/default/files/hrsa/optn/optn_policies.pdf.* Accessed on May 22, 2026 and Letter from HRSA Administrator Dr. Mary Wakefield to OPTN President Dr. John Lake dated August 5, 2011.

remaining definition at § 486.302, defining an ''adverse event'' as ''an untoward, undesirable, and usually unanticipated event that causes death or serious injury or the risk thereof,'' is the same one that was adopted in the 2006 final rule (71 FR 30982, 31046). CMS and OPOs have been applying this definition for the last 20 years. We are not aware of any evidence that inconsistent interpretation by OPOs or surveyors or legitimate disagreements between the OPO and a surveyor on whether an incident was an adverse event has resulted in inappropriate or inconsistent deficiency determinations or other inconsistent enforcement actions. We encourage OPOs to seek guidance from CMS related to whether an incident is an adverse event if they are ever unsure about a particular incident. In addition, CMS provides sub-regulatory guidance, particularly surveyor guidelines in Appendix Y of the State Operations Manual.

Comment: Several commenters requested objective criteria to ensure clarity and uniformity. They recommend limiting the definition of ''adverse events'' to clinical or operational failures that pose risks to patient safety. Others recommend restricting the scope of reportable ''adverse events'' to violations of the OPO's internal policies, OPTN policies and bylaws, and Federal regulations.

Response: While we agree with the commenters that clinical or operational failures that pose risks to patient safety and violations of the OPO's internal policies, OPTN policies and bylaws, and Federal regulations may all constitute ''adverse events'', we disagree that the regulatory definition of the term should be restricted to them. We believe that a restrictive definition would likely leave out possible incidents that should be identified as ''adverse events'' and require compliance with § 486.348(c)(1) and (2). We believe the definition of the term ''adverse events'' set forth in § 486.302, coupled with the revised, non-exhaustive list of examples we proposed to move to the QAPI requirements at § 486.348 (c)(3) provides sufficient guidance on whether an incident constitutes an adverse event.

Comment: Most commenters supported our proposed revision to move the list of examples of incidents that would be considered ''adverse events'' from the definition in § 486.302 to the QAPI section at § 486.348 of the regulations. Some commenters agreed that this shift from defining the term with examples to using them in the context of QAPI emphasized that the list was not exhaustive. However, some commenters disagreed with relocating the list of examples, and a commenter suggested that removing the list of examples would result in more confusion.

Response: We agree that retaining and revising the examples and moving them to the QAPI section of the regulations clarifies that the list of examples is not exhaustive. We reiterate that the list of examples is not being removed from the CfCs. It is being moved to the QAPI requirements related to adverse events (§ 486.348(c)(3)), which should reduce confusion.

Comment: Several commenters sought clarification about whether ''risk thereof'' includes near-misses or latent safety conditions.

Response: The definition of ''adverse events'' would include actions or omissions that could have resulted in death or serious injury but were somehow stopped before that could happen (that is, a ''near miss''). We would also note that OPTN Patient Safety Portal reportable events [8] also include events that could have resulted, but did not, in death or serious injury. Regarding latent safety conditions, we believe that depends upon whether the latent safety conditions resulted in an incident sufficient to constitute an adverse event. We believe these instances would be very fact-specific scenarios and would encourage an OPO to speak with or consult with CMS for further guidance.

Final Rule Action: After consideration of the public comments, we are finalizing the ''adverse event'' definition as proposed.

3. Donor and Organ

Section 486.302 currently defines ''donor'' as ''a deceased individual from whom at least one vascularized organ (heart, liver, lung, kidney, pancreas, or intestine) is transplanted. An individual also would be considered a donor if only the pancreas is procured and is used for research or islet cell transplantation.'' We proposed to revise the definition of the term ''donor'' to clarify that an individual from whom only the pancreas is procured and used for islet cell transplantation or for islet cell research is included in the definition of ''donor'' for purposes of the donation rate outcome measure. This clarification would ensure consistency and continued compliance with the statutory requirement [9] that pancreata used for islet cell transplantation or research be counted for purposes of certification and re-certification. We solicited public comment on the proposed changes to the definition of ''donor''.

Additionally, section 486.302 currently defines ''organ'' as ''. . . a human kidney, liver, heart, lung, pancreas, or intestine (or multivisceral organs when transplanted at the same time as an intestine). The pancreas counts as an organ even if it is used for research or islet cell transplantation.'' The inclusion of pancreata used for islet cell bench research within the definition of ''organ''—and by extension the ''organ transplantation rate''—is inconsistent with CMS' goals to increase the number of actual transplants, as it creates a perverse performance incentive that allows OPOs to count research activity as equivalent to a transplant, potentially masking poor performance in facilitating actual organ placements for patients on transplant waitlists. Therefore, we proposed to remove pancreata used for research from the definition of ''organ'', meaning that such pancreata are removed from the organ transplantation rate outcome measure. Research activity would no longer count as a transplant for purposes of certification and re-certification. We solicited public comment on the proposed changes to the definitions of ''donor'' and ''organ''. The following is a summary of the comments we received and our responses.

Comment: The majority of commenters were supportive of the proposed changes to the definitions of ''donor'' and ''organ''. However, some commenters indicated that the proposed changes did not go far enough and recommended additional changes. Many commenters stated that pancreata procured for islet cell research should be removed entirely from the outcome measures while others proposed alternative ways to count pancreata. Several commenters stated that CMS should create a separate outcome measure specifically for pancreata. A commenter recommended creating a process performance measure for pancreatic islet cell procurement.

Response: We appreciate the support for revisions to the definitions of ''donor'' and ''organ''. PICTA 2004, which amended the PHS Act to add section 371(c), requires pancreata procured and used for islet cell transplantation or research to be counted for certification and re-

[8] Organ Procurement and Transplantation Network. OPTN Policies, 18.5 Reporting of Patient Safety Events, Table 18–3 Required Reporting by Transplant Hospitals. *https://www.hrsa.gov/sites/default/files/hrsa/optn/optn_policies.pdf.* Accessed on May 22, 2026.

[9] Section 371(c) of the PHS Act.

certification purposes. Therefore, we cannot remove pancreata from the numerical outcome measures entirely or assess compliance through an observed process performance measure. At this time, establishing a separate outcome measure is contrary to CMS policy goals, as it would overly incentivize pursuit of donors for islet cell research, likely to the detriment of pursuit of donors for transplantable organs. The organ quality standards and procurement process for research organs differ from those of organs for transplant, focusing less on optimal organ transplant viability that may require precise organ retrieval timing and techniques and costly perfusion equipment for delivery to the transplant program. Establishing a standard that may be easier for OPOs to meet could incentivize OPOs to shift procurement resources away from transplantable organs, and that shift would not be consistent with patient needs and our policy goals. As such, we believe the proposed changes to the definitions are the most appropriate approach to accomplish our policy goals. This would enable counting donors when pancreata were procured for islet cell transplantation or islet cell research, but pancreatic islet cells would only count as a transplant when actually transplanted into a recipient, including transplantation that is conducted under research protocols.

Comment: Several commenters recommended narrowing the scope of research that would qualify for inclusion of pancreata in the outcome measures. A commenter recommended that CMS only include ''pancreata recovered for research focused on pancreatic islet cell transplantation and conducted under FDA approved clinical research.'' Another commenter stated that OPOs may not have access to requested research protocols or other documentation necessary to evidence that the pancreata were actually used for bona fide islet cell research.

Response: We thank commenters for these recommendations. Our proposed revisions to the definition of ''donor'' were intended to emphasize that pancreata must be procured and used for islet cell research or islet cell transplantation, consistent with PICTA 2004, to be counted in the outcome measures. We previously clarified this point in a memorandum issued on January 18, 2024. With respect to the commenter's suggestion to restrict pancreatic islet cell research to only include ''FDA approved clinical research,'' PICTA 2004 requires pancreata procured by an OPO and used for islet cell transplantation or research to be counted for certification or re-certification decisions. That statutory requirement is not limited to clinical research that FDA has allowed to proceed. We also note that we have previously worked with HRSA to revise and clarify coding for pancreata submitted for research (See QSO–24–19–OPO). If an OPO is unable to obtain records demonstrating the pancreata were used for research for islet cell transplantation, it should not code the disposition as ''accepted for islet cell research'' to be included in the CMS outcome metrics.

Comment: Several commenters stated they supported the changes and the exclusion of pancreata islet cells used for research from the transplant rate when the islet cells are not transplanted. A commenter indicated that the proposal strikes a balance between the statutory requirements and concerns about accurate measurement of transplantation rates, suggesting it will facilitate more consistent reporting.

Response: We thank commenters for acknowledging the importance of this change. In our proposed rule, we stated the inclusion of pancreatic islet cell bench research in the definition of ''organ'' has proven to be inconsistent with the goals of the 2020 rulemaking to increase the number of transplants. Our proposed change to the definitions of ''donor'' and ''organ'' are refinements to remove pancreatic islet cell bench research from the transplant rate while appropriately retaining it in measurement of the donation rate. These changes better incentivize both pancreata islet cell research and transplantation via the donation rate and pancreatic islet cell transplantation via the transplant rate while more precisely measuring performance and complying with the PICTA 2004.

Comment: Several commenters indicated that research on pancreatic islet cells when not transplanted, sometimes called ''bench research'', does not involve living persons so approval by an institution review board (IRB) is generally not required. In these instances, the OPO would not have a record of approval from an IRB.

Response: We acknowledge this consideration and how it may impact records for organ disposition when those organs are sent for research. The requirements at § 486.330(b)(2) as finalized in this rule only require an OPO to maintain information documenting approval of an IRB or other formal authorizing body ''as appropriate.'' Where no such approval is required, the OPO is not required to maintain approval documentation. The OPO would, however, continue to be required to maintain records showing the disposition of the organ as set forth in § 486.330(b)(2), including the research institution, principal investigator, and study contacts. Regardless of the information that is available, if an OPO is coding and reporting pancreata procurement and disposition in a manner that would count in the outcome measures, it must be able to provide CMS and the OPTN with sufficient records to support and justify the coded disposition for pancreatic islet cell research.

Comment: Several commenters state that the changes risk creating inconsistent treatment of pancreata across the two outcome measures that may introduce gaming.

Response: The changes to the definition of ''donor'' and ''organ'' increase specificity of reporting and better align the incentives of the measures (more donors and more transplants) to mitigate any potential gaming. These changes fairly count donors of organs that are used for transplantation or islet cell research and transplants that directly benefit patients on the waitlist while complying with the PICTA 2004.

Comment: A commenter questioned the rationale for excluding pancreata used for bona fide islet cell research from the transplant rate. The commenter stated that this exclusion could inadvertently discourage OPOs from supporting research that advances transplantation science.

Response: Pancreata will continue to be counted in the donation rate when procured for islet cell research regardless of whether the final disposition is bench research or transplantation. Pancreatic islet cells will continue to be counted in the transplant rate when actually transplanted. This change continues to incentivize transplant science and transplantation of pancreatic islet cells.

Comment: A commenter recommended that CMS allow supplemental QAPI tracking for pancreata recovered for islet cell research to enhance the integrity of tracking this information.

Response: We appreciate this comment. While we have not proposed a corresponding QAPI requirement for tracking pancreata procured for islet cell research at this time, nothing prevents OPOs from utilizing their QAPI program for this purpose. We will continue to monitor procurement practices in this area and may consider a corresponding QAPI requirement in future rulemaking.

Final Rule Action: We are finalizing as proposed the definition of ''donor'', at § 486.302, as a deceased individual

from whom at least one vascularized organ (heart, liver, lung, kidney, pancreas, or intestine) is transplanted. An individual will also be considered a donor if only the pancreas is procured and is used for islet cell transplantation or for islet cell research. Additionally, we are finalizing as proposed the definition of ''organ'' as a human kidney, liver, heart, lung, pancreas, or intestine (or multivisceral organs when transplanted at the same time as an intestine). The pancreas counts as an organ even if it is used for islet cell transplantation.

4. Medically Complex Donors and Medically Complex Organs

We proposed to add a definition for ''medically complex donor'' and ''medically complex organ''. We proposed to define the term ''medically complex donor'' as a donor whose medical history requires special or additional considerations to identify the best recipient for the organs. These donors would include all DCD donors and donors with elevated KDPI scores of 50 or more. We also proposed to define the term ''medically complex organ'' as an organ procured from a ''medically complex donor''. These definitions are linked to a proposed new QAPI requirement that would require OPOs to facilitate appropriate placement and utilization of these organs, to increase the pool of organs available for transplantation. We solicited public comments on the proposed definitions of ''medically complex donors'' and ''medically complex organs''. The following is a summary of the comments we received and our responses.

Comment: Comments on the definition for ''medically complex donor'' were mixed. Some commenters strongly supported DCD and HIV+ patients being included in the definitions. While some supported a KPDI of 50 or greater, others suggested a score of 85 or greater. Other commenters wanted to include additional comorbidities, such as hypertension or diabetes. Several commenters stated that the proposed definition already applied to most of their deceased donors and raised burden concerns. Other commenters expressed concern that the proposed thresholds, such as KDPI scores, could disadvantage underserved communities. Some commenters recommended using other criteria, such as the criteria previously used for expanded criteria donors (ECDs). Some commenters mentioned considering clinical indications, in addition to medical history.

Response: We would like to thank all the commenters for their valuable input into this definition. After considering the public comments we received, we have determined that there is a lack of consensus among relevant interested parties as to what constitutes a ''medically complex donor.'' Comments on this topic varied significantly, making it extremely difficult to describe a narrowed or specific population of donors. Some commenters recommended utilizing the previous construct of ''expanded criteria donor.'' However, this is no longer utilized by the OPTN nor is it reported by the SRTR. Commenters raised valid concerns regarding burden if the definitions were overly broad which could hamper their QAPI activities from those donors that they believe to be most challenging for placement of organs. In addition, evolving practice patterns, such as the increase in DCD donation, and increased use of technology, such as advanced perfusion technology, are advancing the recovery and placement of organs that were previously considered difficult to place for transplantation. Hence, after consideration of public comments, we are not finalizing these definitions at this time. We will monitor for new constructs that may emerge in the future that would support this proposal, including a consensus on consistent, nationally accepted standards for what constitutes a medically complex donor. Therefore, we will continue to monitor this issue and consider revisiting a proposal regarding medical complexity in the future.

Comment: Some commenters stated that the usefulness of this requirement for OPOs will be limited without corresponding requirements for donor hospitals and transplant programs. For example, some commenters thought that transplant programs should be held accountable for not accepting medically complex organs.

Response: As explained previously in this final rule, we will not be finalizing these definitions. However, we may consider proposing requirements regarding medical complexity in the future. If we do, the commenters' recommendations about corresponding requirements for donor hospitals and transplant programs and accountability will be considered. at that time.

Final Rule Action: After consideration of the public comments we received, we are not finalizing the following definitions: ''Medically complex donor'' and ''Medically complex organ''. Additionally, we are not finalizing the corresponding QAPI requirement as discussed in section III.L. of this final rule.

5. Unsound Medical Practices

In the 2006 final rule, CMS finalized § 486.312(b), which states CMS may terminate an OPO's agreement immediately in cases of urgent need, such as the discovery of unsound medical practices. In addition, we finalized a definition for ''urgent need'' in § 486.302. Urgent need occurs when an OPO's noncompliance with one or more conditions for coverage has caused, or is likely to cause, serious injury, harm, impairment, or death to a potential or actual organ donor or an organ recipient. While we referenced ''unsound medical practices'' as grounds for immediate termination, the OPO CfCs do not currently include a definition for ''unsound medical practices''.

We proposed to define ''unsound medical practices'' as ''failures by OPOs that create an imminent threat to patient health and safety or pose a risk to patients or the public. These practices include, but are not limited to, failures in governance; patient or potential donor evaluation and management; and procurement, allocation, and transport practices and procedures.'' This definition was proposed to ensure that unsound medical practices would be addressed appropriately, and that OPOs would continue to provide high quality care to patients, potential donors and potential transplant recipients. We solicited public comment on the proposed definition of ''unsound medical practices''. The following is a summary of the comments we received and our responses.

Comment: Many commenters expressed support for CMS' goal of clarifying the definition of ''unsound medical practices'' and establishing strong regulatory consequences for conduct that poses an imminent threat to patient safety. Commenters generally agreed that egregious breaches of medical or ethical standards warrant serious enforcement action and that OPOs engaging in reckless or dangerous practices should be held accountable. However, many commenters expressed concerns that the proposed definition of ''unsound medical practices'' is overly broad and vague. They stated that the definition, as proposed, could permit CMS to penalize OPOs even when they are in compliance with existing regulations and may grant CMS excessive discretion, potentially leading to inconsistent or arbitrary enforcement.

Response: We appreciate the opportunity to clarify our intent in proposing this definition. The proposed definition of ''unsound medical practices'' was intended to provide a

clear, enforceable basis for urgent de-certification to protect patients and maintain public trust in the donation and transplantation system. We chose not to be overly prescriptive and specify the exact practices or instances that constitute unsound medical practice, as a narrow definition would risk creating regulatory gaps that could allow unsafe practices to go unaddressed. Rather, we focused on the outcomes of those specific practices and instances and their impacts on health and safety so that we could evaluate each case individually. We disagree that this outcome-oriented approach would lead to arbitrary or inconsistent enforcement. Making individualized determinations that are based on health and safety impacts does not equate to arbitrary enforcement. When we receive complaints or identify potential issues, trained surveyors investigate allegations of unsafe practices that arise, and all determinations are based on the evidence gathered during those investigations. CMS surveyors receive extensive training in assessing facilities for non-compliance, determining the seriousness of outcomes that pose imminent threats to patient health, and deciding when rapid action is needed to ensure safety to eliminate a risk to patients or the public. Additionally, any determination of unsound medical practices would be made carefully after consideration by CMS, given the seriousness of this determination and enforcement actions that would ensue.

Comment: Several commenters expressed concerns that the proposed definition could be interpreted to permit de-certification based on a single, isolated incident. They recommended that CMS clarify that findings of unsound medical practices would be based on objective evidence of repeated or sustained failures and that immediate de-certification would be reserved for the most egregious cases involving clear, severe violations that pose an imminent threat to patient safety or public trust.

Response: A single event may constitute ''unsound medical practices'' and the finding of ''unsound medical practices'' is not limited to patterns of repeated unsafe practices. If a single event creates an imminent threat to patient health and safety or poses a risk to patients or the public, then it can constitute ''unsound medical practices'' and CMS can act immediately to protect patients. This gives CMS a clear, enforceable basis for urgent de-certification to protect patients and maintain public trust in the system. The question is not whether the situation is isolated or recurring, but whether it meets the threshold established by the definition. We will evaluate each situation based on the totality of the evidence and the specific circumstances involved before making a determination.

Comment: Many commenters requested that CMS more clearly distinguish between ''adverse events'' and ''unsound medical practices,'' noting that the two concepts carry different regulatory consequences. They also requested clarification on how QAPI findings would be used in enforcement decisions and suggested that less severe or correctable deficiencies be addressed through standard compliance mechanisms such as plans of correction and enhanced oversight, consistent with CMS' approach to immediate jeopardy with other provider types.

Response: We agree that ''adverse events'' and ''unsound medical practices'' are distinct concepts that carry different regulatory consequences. Adverse events, while serious, generally can be addressed through an OPO's internal QAPI program if they do not rise to the degree of severity and impact on patient or public health and safety to be considered unsound medical practices. Section 486.348(c) requires that OPOs establish written policies to address, at a minimum, the process to identify, report, analyze, and prevent adverse events that occur during the organ donation process. It also requires that OPOs conduct a thorough analysis of any identified adverse event and use that analysis to drive process improvement by effecting changes in their policies and practices to prevent repeat incidents. ''Unsound medical practices'' are failures by the OPO in which the OPO knows, or should have known, that its inaction, actions, or outcomes has caused, or is likely to cause, serious injury, harm, impairment, or death to a potential or actual donor or an organ recipient, creating an imminent threat to patient health and safety or public safety. The critical distinction between an ''adverse event'' that can be addressed through a QAPI program under § 486.348(c) and ''unsound medical practices'' that may support de-certification for urgent need lies not in whether an incident is isolated or repeated, but rather in the degree of severity and impact on patient or public health and safety and the need for immediate action. If an adverse event is of such severity and impact to health and safety that it rises to the level of an unsound medical practice, standard compliance mechanisms such as QAPI are insufficient to address the concern. Therefore, CMS would apply its regulatory standards for unsound medical practices within the context of de-certification due to urgent need and proceed accordingly. Less severe deficiencies would be addressed through standard compliance mechanisms—such as acceptable plans of correction and additional oversight. We believe the definitions of adverse events and unsound medical practices strike the appropriate balance between providing CMS with the enforcement flexibility necessary to protect patient and public safety and ensuring that enforcement actions are based on objective, evidence-based findings.

Comment: Several commenters objected to the inclusion of ''failures in governance'' within the definition, stating that governance issues are administrative rather than clinical in nature and do not directly threaten patient health and safety.

Response: We disagree that ''failures in governance'' are solely administrative in nature or that they cannot directly threaten patient health and safety. Governance establishes the oversight and accountability framework necessary to ensure that clinical practices are performed safely and in accordance with applicable requirements. For example, a circumstance in which an OPO's governing board directs staff to undertake actions that are inconsistent with standards of practice, OPO policies, CMS rules and requirements, and/or local, State, or Federal laws that knowingly create an imminent threat to patient health/safety or pose a risk to patients or the public, would reflect a failure in governance. Specifically, it would reflect a failure of the governing board to enforce established policies and procedures, placing patients at immediate risk of serious harm. Therefore, we are finalizing a definition of unsound medical practices that includes failures in governance.

Comment: A commenter recommended that CMS expand the definition to include OPO staff conduct toward patients' families, such as overly assertive behavior in the consent process and failure to collaborate with hospital staff in establishing referral criteria and donation protocols.

Response: Approaching donor families with compassion, sensitivity, and respect during the donation process and allowing for adequate time to make a decision are incredibly important practices and have been shown to improve donation consent rates.[10]

[10] Rodrigue JR, Cornell DL, Howard RJ. Organ donation decision: comparison of donor and nondonor families. Am. J. Transplant. 2006 Jan;6(1):190–8. doi: 10.1111/j.1600–6143.2005.01130.x. PMID: 16433774; PMCID: PMC2365918.

Families should never feel rushed, coerced, or disregarded when making decisions about organ donation. Overly assertive or pressuring behavior not only undermines public trust in the donation system but may also constitute a violation of existing requirements under § 486.342, which mandates that OPOs encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of potential donor families. Complaints against an OPO may be submitted through various channels, including CMS,[11] State survey agencies, HRSA,[12] the OPO, or the hospital. Similarly, CMS emphasizes the importance of strong collaboration between OPOs and hospital staff throughout the donation and procurement process. These collaborative responsibilities are reflected in existing requirements under § 486.322(a), which requires OPOs and donor hospitals to establish written agreements defining certain responsibilities and protocols—including definitions of ''timely referral'' and ''imminent death.'' Additional guidance is available in the SOM, Appendix Y—Organ Procurement Organizations. While we are not expanding the definition of ''unsound medical practices'' to include these areas at this time, the existing regulatory framework provides clear expectations for OPO conduct toward patients' families, such as overly assertive behavior in the consent process and failure to collaborate with hospital staff in establishing referral criteria and donation protocols.

Comment: Several commenters objected to the term ''unsound medical practices'' itself, stating that OPOs do not practice medicine or provide care to living patients and instead function in a coordination and procurement role. They suggested alternative terms such as ''unsound donation practices'' or ''unsound procurement practices,'' to better reflect OPO responsibilities and reduce potential confusion among interested parties and the public.

Response: The term ''unsound medical practices'' is not intended to refer to clinical activities outside the scope of an OPO's activities; rather, it is intended to encompass the full range of OPO activities during the donation and procurement process, including transport of a viable organ intended for a living person. We do not believe that either ''unsound procurement practices'' or ''unsound donation practices'' adequately captures that full range. For instance, ''unsound procurement practices'' would be too narrow because the proposed definition includes ''procurement . . . practices and procedures'' as a subset of unsound medical practices. Similarly, ''unsound donation practices'' may be overly limiting and would not necessarily encompass additional activities included in the definition, such as transport practices and procedures. The term ''unsound medical practices'' best reflects the full range of OPO activities the definition is intended to cover and avoids the ambiguity that either alternative term would introduce.

Comment: Many commenters expressed concerns that examples of ''unsound medical practices'' provided in the proposed rule are unclear, overly broad, and, in some cases, inconsistent with the role of OPOs. Commenters stated that the example, ''failure to ensure the potential donor is declared dead according to applicable State law and hospital policies,'' inaccurately suggests that OPOs are responsible for, or influence, the clinical determination of death. They recommended that CMS revise the example to clarify that the OPO's role is limited to verifying that death has been declared in accordance with applicable requirements.

Several commenters also raised concerns that the phrase ''necessary and customary tests'' lacks specificity and is not clearly defined. They recommended that CMS provide additional detail regarding what constitutes such testing and align any requirements with existing OPTN policies governing donor evaluation. Commenters further emphasized that OPOs should only be held accountable for testing activities within their direct control. Some commenters expressed concern that unclear or expanded testing requirements could create operational burdens, delay the donation process, and potentially increase organ non-use.

Additionally, commenters stated that the example ''pursuing patients with inappropriately high neurologic function'' lacks clinical specificity and is not defined in current CMS or OPTN policy. They cautioned that this language could lead to inconsistent interpretation and discourage appropriate donor evaluation, including for patients with severe neurologic injury, donation after circulatory death candidates, or individuals with conditions such as ALS or spinal cord injury, thereby potentially reducing donation opportunities.

A commenter suggested expanding the examples of unsound medical practices to include failures by OPOs to utilize perfusion technologies when procuring and transplanting organs. Overall, several commenters urged CMS to revise the examples to more clearly reflect OPO responsibilities and include objective clinical criteria where applicable.

Response: We appreciate commenters' requests for additional clarification regarding the scope and intent of the examples discussed in the proposed rule. The examples referenced in the proposed rule are illustrative only and are not intended to be interpreted as part of the regulatory definition of ''unsound medical practices.''

Regarding the example referencing ''failure to ensure the potential donor is declared dead according to applicable State law and hospital policies,'' we note that the decision to withdraw life support and the subsequent declaration of death, if death occurs, are solely the responsibility of the patient's attending physician or a hospital physician designee in accordance with hospital policy and applicable State law.[13] OPOs may not be involved in the decision to withdraw life support, the timing of withdrawal, or the declaration of death in any way. However, OPOs are required to verify that the pronouncement of death for potential donors adheres to applicable local, State, and Federal laws (§ 486.344(b)(1)), including in cases involving DCD. Following the declaration of death and prior to initiating the organ recovery process, the OPO should confirm that death has been pronounced and obtain documentation of the pronouncement of death.

Regarding the example referencing ''necessary and customary tests,'' we do not intend to establish a new requirement or expand existing testing expectations. Under OPTN Policy 2.9, OPOs are required to ensure that infectious disease testing is performed for all potential deceased donors. This includes standardized screening for communicable diseases, as well as additional testing as clinically indicated by donor risk assessment. OPOs are also responsible for ensuring that specimens are collected within appropriate timeframes, that testing is performed in Clinical Laboratory Improvement Amendment (CLIA) certified laboratories, and that all required and relevant results are accurately documented and communicated to transplant centers in a timely manner.

[11] Complaints or issues related to OPOs may be submitted to the following email address: *SOG-OPO@cms.hhs.gov.*

[12] Reporting Allegations of Misconduct. *https://www.hrsa.gov/optn/about/contact-us/report-misconduct.* Accessed May 26, 2026.

[13] Organ Procurement Organizations (OPOs) and Donor Hospitals' Responsibilities Memo. *https://www.cms.gov/files/document/qso-26-05-opo-original-release-date-2026-03-11-pdf.pdf.*

These testing requirements align with § 486.346 by promoting safe organ recovery and minimizing the risk of disease transmission through transplantation.

Finally, regarding the example referencing ''pursuing patients with inappropriately high neurologic function,'' this example is not intended to establish clinical eligibility criteria, define neurologic thresholds, substitute for clinical judgment, or discourage OPOs from pursuing particular categories of potential donors. Rather, it is intended to emphasize the importance of adhering to established clinical and regulatory safeguards, including requirements related to the determination of death and appropriate donor evaluation, to protect patient safety. OPOs are expected to immediately cease the procurement process if signs of life are observed at any point before or during organ recovery. A prior declaration of death by the attending hospital physician does not authorize an OPO to continue the donation process if signs of life are subsequently detected. Failure to adhere to these safeguards could constitute conduct that poses an imminent threat to patient health and safety.[14]

Comment: Several commenters urged CMS to align implementation guidance with OPTN and HRSA standards and to consider issuing additional surveyor guidance to promote national consistency.

Response: We intend to develop and issue implementation and surveyor guidelines to provide additional clarity regarding the application of the definition of ''unsound medical practices,'' including how surveyors will identify, document, and evaluate any conduct that may constitute unsound medical practices.

Final Rule Action: After consideration of the public comments we received, we are finalizing as proposed. We define unsound medical practices as failures by OPOs that create an imminent threat to patient health and safety or pose a risk to patients or the public. These practices include, but are not limited to, failures in governance; patient or potential donor evaluation and management; and procurement, allocation, and transport practices and procedures.

[14] Additional information regarding the roles of OPOs and donor hospitals during the organ donation and procurement process is available via sub-regulatory memoranda (QSO–26–05–[OPO & Transplant]), accessible at *https://www.cms.gov/files/document/qso-26-05-opo-original-release-date-2026-03-11-pdf.pdf.*

C. Requirements for Certification (§ 486.303)

CMS has historically interpreted the OPO Certification Act of 2000 (the Certification Act), which added section 371(b)(1)(D) of the PHS Act, to mean the Secretary lacks the authority to certify new OPOs. Upon recent reassessment, however, we determined that the statute was not intended to strip the Secretary of his authority to certify new OPOs. Therefore, we proposed to remove § 486.303(e), which conditions OPO certification on an entity having been re-certified as an OPO from January 1, 2002, through December 31, 2005. This eliminates a regulatory barrier that prevents the Secretary from implementing a process for certifying new OPOs. We also believe that removing this requirement would address concerns about market consolidation by creating a more diverse and robust market that enhances competition among OPOs.

We also solicited public comments on a process to certify new OPOs. The following is a summary of the comments we received and our responses.

Comment: Several commenters stated that CMS lacks statutory authority to certify new OPOs and that CMS' reinterpretation of the PHS Act expands its authority beyond what Congress authorized. Commenters stated that Congress unambiguously used the past tense in requiring OPOs to ''ha[ve] been certified or re-certified by the Secretary within the previous 4-year period,'' 42 U.S.C. 273(b)(1)(D), and that entities not yet in existence as of January 1, 2000, cannot satisfy that requirement.

Additionally, commenters noted that Congress required the Secretary to ''use multiple outcome measures as part of the certification process,'' (42 U.S.C. 273(b)(1)(D)(ii)(III)). Commenters stated that outcomes are, by definition, retrospective and therefore Congress must have intended that CMS could certify only OPOs already in existence.

Commenters also stated CMS cannot create new performance measures to justify certifying new entities or lawfully permit newly certified OPOs to compete with established, statutorily qualified organizations, and noted that the statute does not authorize CMS to favor new entrants. They recommended that any policy changes to allow the certification of new OPOs should be pursued through legislative action rather than regulatory interpretation.

Response: We appreciate these comments and disagree that CMS lacks the authority to certify new OPOs. The Certification Act amended the PHS Act to add subparagraph (D) to section 371(b)(1), which defines a qualified OPO as an organization that ''has met the other requirements of this section and has been certified or re-certified by the Secretary within the previous 4-year period as meeting the performance standards to be a qualified organ procurement organization through a process'' defined in regulations.

While we have previously interpreted the Certification Act to strip CMS of its prior authority to certify new OPOs, we no longer believe that interpretation to be the best reading of the statute. Upon further review, we no longer believe that the Certification Act is best read to require all qualified OPOs to have been previously certified as of January 1, 2000. Instead, the statute is better read to mean that whenever the agency initially certifies a new OPO or recertifies an existing OPO as meeting the Secretary's performance standards within a 4-year period, OPOs must demonstrate at the end of that period that they continue to meet those standards. We note also that Executive Order 14219 directs Federal agencies to review existing regulations for potential candidates for rescission, prioritizing those that can no longer be justified under several recent decisions of the U.S. Supreme Court, including *Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369 (2024). In *Loper Bright,* the Court explained that statutes have a ''single, best meaning'' that agencies must follow. Because we believe this is the best reading of the statute, it is consistent with the rationale of *Loper Bright* to adopt it.

Section 371(b)(1)(D)(ii) of the PHS Act specifically provides that a qualified OPO is an OPO that, among other things, ''has been certified or re-certified . . . within the previous 4-year period'' through ''a process'' that is ''defined through regulations . . . promulgated by the Secretary.'' There is no language in that provision requiring an OPO to demonstrate that it was certified as of January 1, 2000, as part of those standards. This language is past tense in that it refers to an OPO that ''has been'' certified or re-recertified within the previous 4-year period. But the statutory language does not indicate that the ''previous 4-year period'' refers only to the 4-year period prior to enactment of the statute, as commenters suggest. A new OPO could meet this standard upon initial certification. In addition, the statute requires the Secretary to ''use multiple outcome measures as part of the certification process'' (emphasis added). The fact that the statute contemplates a certification process that uses outcome measures, rather than restricting the application of outcome

measures to re-certification, further indicates that the Secretary is not limited to recertifying existing OPOs and that Congress considered it possible to use outcome measures in the certification process. Thus, nothing in the text of the statute supports reading it to strip the Secretary of his authority to certify either an entirely new OPO or one that was previously de-certified.

Comment: A few commenters supported CMS' goal of ensuring that all communities are served by high-performing OPOs and acknowledged that permitting new entities may improve accountability and performance across the system, but only if the new entities can demonstrate sufficient readiness and capability. Many commenters expressed concern that certifying organizations without an established performance history could disrupt continuity of care and negatively affect both donors and transplant recipients. These commenters emphasized that any certification of new entities should be contingent on demonstrated operational readiness and capability, rather than projected performance.

Commenters offered a range of recommendations on the certification of new OPOs. Many commenters suggested that new entities must be nonprofit organizations, while one OPO recommended that CMS allow any entity to become an OPO regardless of nonprofit status. Another commenter recommended that any new entity be required to meet all existing CfCs under 42 CFR part 486, subpart G, prior to certification, without exception or phased implementation. A commenter suggested that, in the absence of historical outcome data, CMS should permit new entities to demonstrate readiness through alternative evidence—such as leadership experience, operational readiness, and systems capability—while still requiring compliance with applicable CfCs and process performance requirements. Two commenters proposed alternative certification pathways—one through an expedited process for applicants demonstrating clinical infrastructure, transplant center partnerships, and sufficient financial reserves, and another through accreditation by national accrediting organizations. Commenters also requested additional clarity on how new OPOs would be monitored, measured, and benchmarked, including whether they would be evaluated differently from incumbent OPOs. Commenters also sought clarification on whether OPOs de-certified in one cycle could be re-certified in a subsequent cycle and, if so, under what conditions.

Commenters also offered a range of recommendations on the designation of a DSA to a new OPO. A few commenters stated that, at a minimum, new OPOs should be subject to the same competition selection criteria as existing OPOs when applying for an open DSA. Another commenter recommended that CMS develop a standardized DSA Readiness Assessment to ensure that a new OPO is capable of performing immediately upon designation. This commenter suggested that at a minimum, this assessment should include: established clinical and operational capacity with qualified staffing and 24/7 readiness; demonstrated ability to effectively engage with donor families and communities; data-driven and third-party validated analysis of donor potential; and evidence of financial stability to sustain operations. A commenter stated that new OPOs should not receive any advantage in the selection process, as they lack experience and historical performance data and cannot be presumed to outperform existing OPOs. Another commenter suggested that CMS limit the certification of new entities to scenarios in which an OPO has been de-certified and no existing OPO seeks to compete for the open DSA.

Response: We agree that each DSA should be served by a qualified OPO capable of performing organ procurement services. Given the complexity and significance of establishing a certification process for new OPOs, we did not propose a specific initial certification framework in the January 2026 OPO proposed rule. We intend to address certification of new OPOs and the process by which a newly certified OPO might be designated to a DSA in future rulemaking and will take the recommendations received into consideration at that time.

Final Rule Action: After consideration of the public comments we received, we are finalizing as proposed removing § 486.303(e). We will address the process to certify new OPOs, as well as the process by which a newly certified OPO might be designated to a DSA, in future rulemaking.

D. Designation of One OPO for Each Service Area (§ 486.308)

Currently, § 486.308(a) states that, ''CMS designates only one OPO per service area. A service area is open for competition when the OPO for the service area is de-certified and all administrative appeals under § 486.314 are exhausted.'' We proposed to revise requirements at § 486.308 to further address changes made in the December 2020 OPO final rule related to when a DSA is open for competition. Additionally, current requirements indicate that ''[a]n OPO is normally designated for a 4-year agreement cycle. The period may be shorter, for example, if an OPO has voluntarily terminated its agreement with CMS and CMS selects a successor OPO for the balance of the 4-year agreement cycle. Additionally, the period may be shorter due to involuntary termination of an OPO due to non-compliance with the process performance measures (§§ 486.320 through 486.360). In rare situations, a designation period may be longer, for example, a designation may be extended if additional time is needed to select a successor OPO to replace an OPO that has been de-certified.'' We proposed to clarify how an OPO is assigned a DSA and how we determine the OPO designation period. Specifically, we proposed to (1) clarify the normal designation period and when CMS may adjust the length of the period; (2) clarify designation periods for newly acquired DSAs; (3) specify the circumstances that trigger a DSA to become available for competition; and (4) establish criteria for successor selection when insufficient time exists for a full competition process.

We proposed to clarify all circumstances when a designation period may be adjusted. We proposed at § 486.308(a)(1) that CMS may adjust the length of a designation period when: (i) there is a voluntary termination of an OPO's agreement with CMS; (ii) there is an involuntary termination of an OPO's agreement with CMS; (iii) additional time is needed to complete an appeal, conduct a competition, select a successor OPO, or transition the DSA to a successor OPO; or (iv) there is an extension of the agreement cycle for extraordinary circumstances as specified at § 486.316(f).

We proposed at § 486.308(a)(2) that CMS would conduct a competition for all vacated DSAs. We also proposed at § 486.308(a)(3) that the designation period for any newly acquired DSA, whether following a competition or as the result of being assigned a DSA, will be the remaining portion of the agreement for the acquiring OPO's existing re-certification cycle. We proposed at § 486.308(a)(4) that if an OPO does not fulfill the terms of its agreement, whether voluntarily or involuntarily, and there is insufficient time to conduct a competition to select a successor OPO for its DSA, CMS may designate another OPO without first

conducting a competition. We stated that we would exercise this option only if there were concern for continuity of organ donation in the DSA in situations such as a termination for urgent need, a cessation of business, or because the incumbent OPO was unable to sustain services to provide an orderly transition to a successor OPO. In selecting an OPO under these circumstances, CMS would consider the following factors: contiguity to the DSA; performance on outcome measures at § 486.318; history of compliance with the process performance measures at §§ 486.320 through 486.360; and willingness of the OPO to perform the responsibilities.

Currently, § 486.308(a) states that a service area is open for competition when the OPO for the DSA is de-certified and all administrative appeals at § 486.314 are exhausted. We proposed to amend this language to conform with requirements for competition at § 486.316 and outcome measures at § 486.318 to implement the tiered system for competition from the December 2020 final rule and clarify competition requirements if an OPO were to voluntarily terminate its agreement. Additionally, with the exception of de-certification for urgent need, revisions to this section clarify that de-certification would not occur until after any applicable appeal is completed, competition for the open DSA is completed, and the DSA is transitioned to the successor OPO.

Specifically, we proposed to address all circumstances under which a DSA is open for competition. A DSA is open for competition when:

- An OPO's DSA is assigned tier 3 status in the final assessment period and all administrative appeals are exhausted;
- An OPO's DSA is assigned to tier 2 for outcome measures in the final assessment period;
- An OPO is not in compliance with the process performance measures at §§ 486.320 through 486.360, all administrative appeals are exhausted, and the OPO is pending de-certification; or
- An OPO requests to voluntarily terminate its agreement to participate, except where the voluntary termination is associated with a change in control, ownership, or service area resulting from a merger with another OPO.

We solicited public comment on these proposed changes at § 486.308. The following is a summary of the comments we received and our responses.

Comment: A commenter recommended that CMS revise the OPO certification period to end on December 31 of the last year of the re-certification cycle and start the next cycle on January 1. The commenter stated that this would provide the public and the OPO community more time to verify the outcome measures, appeals, and competition. The commenter stated that the outcome measures from the final assessment period should be available for at least 6 months prior to the expiration of the OPO contracts. The commenter stated that these changes would effectively minimize potential disruptions in the area if the incumbent OPO is not redesignated to the DSA.

Response: The dates of the re-certification cycle and the OPO agreement period are not within the scope of this rule, as we did not propose any changes to them. We note that once OPO annual public aggregated performance reports are published, OPOs are provided a preview period to verify their data and outcomes and raise any concerns to CMS prior to the public report being posted. Re-certification cycles end on July 31 every four years. However, the current OPO agreements end 6 months later on January 31, 2027. Additionally, we may extend agreements beyond this timeframe under § 486.314(n) (revised and moved from § 486.314(j)), if necessary to complete appeals and any necessary competitions and facilitate an orderly transition of the DSA. An extension of an agreement under § 486.314(j), or § 486.314(n) as finalized in this rule, serves the limited purpose of allowing for these processes, where necessary, and does not extend the agreement cycle.

Comment: A commenter stated that the designation of a DSA to an OPO in the middle of the OPO's current agreement period should not shorten the designation period for the OPO. The commenter recommended that an OPO be permitted to complete the remainder of the agreement period for the newly designated DSA and should be re-certified at the end of that agreement period for at least another 4-year agreement term regardless of manner or circumstance of the designation of the new DSA.

Response: We appreciate the opportunity to clarify the designation periods described at § 486.308(a)(3), as finalized in this rule, and existing requirements at § 486.310(b)(2) and our rationale for the requirements for when OPOs would be held accountable on the outcome measures at § 486.318(c)(3) and (4), as finalized in this rule. If an OPO is designated to a DSA mid-cycle, meaning after August 1 of the first year of the re-certification cycle, we will designate the OPO to the new DSA for the remainder of that re-certification cycle regardless of the reason for the designation. The OPO's re-certification and designation to the new DSA for the subsequent re-certification cycle would be based on the nature of the circumstances that resulted in the designation and availability of outcome measures from the final assessment period. If the initial designation was the result of a competition or resulted from CMS assigning the DSA to the OPO, we would re-certify the OPO at the end of the re-certification cycle, provided it is in compliance with the process performance measures, and redesignate the OPO to the DSA to provide additional time for it to operate in the DSA before holding it accountable on the outcome measures in the subsequent re-certification cycle as specified at § 486.318(c)(4). This policy is due to the greater challenge of assuming responsibility for a DSA in potentially contentious or unanticipated circumstances. If the designation was the result of a change of control or ownership or service area under § 486.310, which generally occur under planned, cooperative circumstances, we would hold the OPO accountable on the outcome measures after 12 months of data are available as specified at § 486.318(c)(3). Re-certification and redesignation to the DSA would depend on the timing of the change that resulted in being designated to a new DSA and the availability of outcome measures for that DSA under new leadership. A change of control or ownership or service area results from extensive pre-planning, cooperation, and sharing of information, all of which are likely to advantage the OPO in meeting the CMS outcome measure standards. Given these built in features that support more timely compliance with the outcome measure standards, it is our policy that if outcome measure data are available for the new DSA at the time of re-certification, CMS would hold the OPO accountable on the outcome measures for that DSA. The OPO's re-certification and redesignation would depend on the OPO's performance and tier standing in the final assessment period, provided the OPO met all other process performance requirements. We believe this approach balances performance expectations and timeframes with the circumstances and challenges posed by the nature of the change. Therefore, we are not adopting the commenter's recommendations.

Comment: Several commenters stated that an OPO that is involuntarily assigned a DSA will expend significant administrative and clinical resources in the newly assigned DSA to the possible

detriment of the OPO's original DSA. These commenters stated that the OPO should not be disadvantaged by the involuntary assignment and accommodation should be made to that OPO for both of its DSAs if performance decreases.

Response: We thank the commenters for sharing these concerns. The instances when CMS would assign a DSA to an OPO include when there is insufficient time to conduct a competition as specified at § 486.308(a)(4), as finalized in this rule, and if there are no competitors in a competition as specified at § 486.316(e). While we appreciate the additional responsibility that the OPO would be taking on, we will continue to require OPOs to meet the minimum performance standards on the outcome measures. However, in response to the concerns raised by commenters regarding the potential for assignment to temporarily lower an OPO's performance in its existing DSAs, and to avoid disadvantaging OPOs that are assigned a new DSA without a competition, we are adding a provision to § 486.316(a)(2) to provide that when CMS assigns an OPO to a new DSA under § 486.308(a)(4) or § 486.316(e), that OPO's new and existing DSAs will not be opened for competition at the end of that re-certification cycle if the OPO's performance in those DSAs qualifies for tier 2 in the final assessment period. But an OPO must satisfactorily meet the outcome measures in its original DSAs by achieving tier 1 or tier 2 performance in the final assessment period to retain those DSAs. This provision would partially address concerns by commenters regarding the impact of unplanned expansion to an OPO's other DSAs. However, we cannot permit an OPO to retain its other DSAs if performance in those DSAs decreases to tier 3. Therefore, if an OPO's performance in its original DSA decreases to the extent that the DSA is assigned to tier 3, we would issue an initial notice of de-certification or a notice of removal of designation to a tier 3 DSA without de-certification in accordance with the process set forth at § 486.314(a). If the assignment occurs on a date later than January 1 of the first year of the agreement cycle, the OPO will be held accountable for its performance in the newly assigned DSA as set forth at § 486.318(c)(4).

Comment: Several commenters expressed concern with proposed designation requirements at § 486.308(a)(4), in the circumstance when CMS would designate an OPO to a DSA where there is insufficient time to conduct a competition. Commenters stated that the DSA should not be opened for competition and the OPO should retain designation until a full re-certification cycle is completed. Commenters stated that the OPO should retain the DSA if its performance is acceptable at that time. Commenters highlighted the significant undertaking of accepting a DSA in this circumstance and stated that they should be given the opportunity to retain the DSA if its performance supports this.

Response: We agree with the commenters on this issue. While our standard approach is to provide competition for open DSAs, the commenters raise valid concerns regarding the commitment of administrative and clinical resources necessary to stabilize a DSA under these circumstances. We are modifying proposed § 486.308(a)(2) and (4) to indicate that we would not open a DSA for competition following assignment of the DSA to an OPO under the circumstances described in § 486.308(a)(4). The OPO would retain designation to the DSA for the remainder of the designation period rather than opening for competition at the earliest possible time. In response to the concerns raised by commenters, we are modifying proposed § 486.308(a)(3) to include assignment of a DSA where there is insufficient time to conduct a competition as another scenario in which the OPO will be designated for the remaining portion of the current re-certification cycle. We are also modifying the language of proposed § 486.318(c)(4) to make clear that that an OPO that is assigned a new DSA under either § 486.308(a)(4) or § 486.316(e) will be assessed on the outcome measures in the new DSA for re-certification purposes based on the final assessment period of the next full re-certification cycle. However, to facilitate assessment of the OPO's performance in the newly assigned DSA, we will retain the language of proposed § 486.309(b), which excludes assignment of a DSA due to insufficient time to conduct a competition from the scenarios in which an OPO may choose to consolidate DSAs. Finally, we are adding regulatory references for competition (§ 486.316(d)) and assignment of a DSA by CMS (§ 486.308(a)(4)).

Comment: Several commenters recommended that CMS better define the circumstances at § 486.308(a)(4) under which it would designate an OPO to a DSA without conducting a competition. Commenters stated that CMS should prioritize continuity of donation operations and provide realistic timelines, recognizing that transitions involve complex operational, legal, and governance factors in addition to clinical operations. Another commenter stated that CMS should clearly explain how the objective factors identified to guide designation decisions are weighed when competition is not feasible.

Response: We thank commenters for sharing these concerns and recommendations. While it may be difficult to predict every circumstance when we would assign a DSA to an OPO without conducting a competition as specified at § 486.308(a)(4), we anticipate this would be an extremely rare occurrence that would be utilized to ensure continuity of organ donation activities. De-certification due to urgent need, as set forth at § 486.312(a)(4), or an OPO ceasing operations or voluntarily terminating its agreement with CMS without adequate notice to conduct a competition could all necessitate CMS assignment of a DSA to preserve organ donation activities. Although we did not receive any comments specifying alternative factors to consider when assigning a DSA in this situation, a commenter requested information about how we would weigh various factors under consideration. These factors include contiguity to the DSA, performance on outcome measures at § 486.318, history of compliance with the process performance measures at §§ 486.320 through 486.360, and willingness of the OPO to perform the responsibilities for the remainder of the designation period. Additionally, we are finalizing a modification to the proposed language at § 486.308(a)(4) to indicate that we would assign the DSA to a single OPO, rather than ''one or more''. Given that CMS will only select a successor OPO under § 486.308(a)(4) when there is insufficient time to conduct a competition, we expect that there would also be insufficient time in that scenario to take additional action to divide the DSA among multiple successor OPOs. Accordingly, we are finalizing a modification to the proposed language of § 486.308(a)(4) to reflect that CMS would only select a single successor OPO for designation to the DSA when that provision applies.

Final Rule Action: We are finalizing the proposed changes to § 486.308 with modifications to paragraphs (a)(2), (3), and (4). After considering public comments, we are modifying paragraph (a)(2) to add ''except as noted in paragraph (4)'' to include an exception to opening a DSA for competition. We are modifying paragraph (a)(3) to add regulatory references ''§ 486.316(d)'' and ''§ 486.308(a)(4)'' to the paragraph to identify all instances when CMS may

assign a DSA to an OPO. In paragraph (a)(4), we are removing the provision that we would open the DSA for competition after assigning a DSA to an OPO. Additionally, we are modifying the first sentence to indicate that we would select a single OPO when assigning a DSA in this situation. We are also modifying § 486.316(a)(2) to address concerns of commenters to ensure that an OPO is not disproportionately impacted in the event an OPO's performance decreases or fails to improve after being assigned a DSA by CMS.

E. Designation of an OPO to More Than One Service Area (§ 486.309)

Since the December 2020 OPO final rule was issued, some OPOs have requested guidance on how an OPO could manage more than one DSA. Section 1138(b)(2) of the Act provides that the Secretary may not designate more than one OPO for each service area and the current OPO CfCs only address one OPO being designated to only one DSA. Given that OPOs have expressed interest in this area and the statute does not explicitly restrict this situation, we proposed to replace obsolete requirements at § 486.309 related to the re-certification of OPOs during August 1, 2006, through July 31, 2010 with new requirements to address situations in which an OPO is responsible for more than one DSA.

Permitting an OPO to separately maintain multiple DSAs could maintain some level of market diversity to support future competition. OPOs have also expressed concern for assuming responsibility for DSAs where other OPOs have historically underperformed and merging those areas with their existing DSA. These OPOs have indicated they would prefer to manage DSAs separately to ensure they could improve performance without risk to their existing DSA if they were to combine DSAs and have outcome measures assessed for the combined areas. To give OPOs additional flexibility to maintain separate DSAs, we proposed that an OPO could be assigned to more than one DSA: (1) following a change in control, ownership, or service area; (2) as the result of a competition; or (3) as a result of CMS assignment when there is insufficient time to conduct a competition. In these instances, the OPO would need to determine how best to manage its organization for the respective areas. We proposed that if an OPO was made responsible for more than one DSA following a change in control, ownership, or service area, or a competition, the OPO could choose to consolidate the DSAs, maintain separate DSAs, or a combination thereof if more than two DSAs were involved. Additionally, we proposed that if CMS were to assign a DSA to an OPO following a voluntary or involuntary termination, the OPO would be required to maintain the newly assigned DSA separately to facilitate future competition. We also proposed that the DSA would be opened for competition at the end of the designation period, as designation of an OPO to a DSA in this situation would be a temporary measure intended to maintain organ procurement services and to provide time to facilitate an orderly transition of the DSA to a successor OPO following a competition.

We also proposed an approach for the application of both the outcome and process performance measures when an OPO is designated to multiple DSAs. We proposed that when an OPO consolidated multiple DSAs, regardless of contiguity, into a single DSA, we would assess the OPO's performance on the outcome measures as a single DSA. At the final assessment period, if the OPO could not satisfy the outcome measures for the merged DSA, the OPO would be de-certified (subject to the available appeal rights). An OPO with one DSA faces de-certification if it is non-compliant with any of the CfCs, including the process performance measures (§§ 486.320 through 486.360) or the outcome measures (§ 486.318), at the time of re-certification. However, our proposed approach would permit an OPO that obtained a new additional DSA to choose to maintain separate DSAs, rather than consolidating its new DSA with its existing DSA. While the OPO would still be required to meet the process performance measures in the conditions for coverage for all of its DSAs to avoid de-certification, we proposed that we would consider the OPO's performance on the outcome measures separately for each DSA when the OPO chooses to maintain separate DSAs. This would enable the OPO to meet the outcome measures in one DSA, even if the OPO did not satisfy the outcome measures in a separate DSA at the time of re-certification. Specifically, we proposed that when an OPO is designated to more than one DSA, CMS would remove designation to a tier 3 DSA in the event of non-compliance with the outcome measures for that DSA at the end of the re-certification cycle. We proposed that such removal of designation would not result in de-certification unless an OPO is no longer designated to any DSA due to tier 3 outcome measure performance across all of its DSAs (see corresponding requirements at § 486.316). We also proposed that an OPO may appeal the decision to remove its designation to a tier 3 DSA, and that the removed DSA would be opened for competition after any appeal for that DSA is exhausted and the decision is upheld.

We solicited public comment on the proposed changes in § 486.309. The following is a summary of the comments we received and our responses.

Comment: Some commenters were supportive of the proposal allowing OPOs to choose to maintain separate DSAs. They were also generally supportive of allowing OPOs the flexibility to manage their DSAs in a manner that best suits their organizational and operational needs, noting that the factors considered in these decisions may vary based on the DSA and the OPO. A commenter supported CMS retaining final authority over multi-DSA arrangements with clear criteria, including operational capacity and accountability safeguards, while still allowing OPOs the flexibility to maintain separate DSAs, as appropriate.

Response: We agree that OPOs designated to serve more than one DSA should have flexibility to establish their organizational and operational structure in a manner that best enables them to most effectively provide organ procurement services. There are many organizational and operational factors OPOs would need to consider in determining how to best design their operations. As a result, some OPOs may determine that consolidating DSAs into a single DSA is beneficial, while others may determine that maintaining separate DSAs is more appropriate.

Comment: A commenter requested confirmation that an OPO is permitted to establish a distinct Standard Acquisition Charge (SAC) for each DSA, regardless of whether those DSAs are operated through separate legal entities or unincorporated divisions within a single legal entity. The commenter also sought clarification on CMS' expectations for allocating shared overhead, executive, and administrative expenses across multiple DSAs in distinct cost reports, specifically asking whether time studies conducted one week per month would be a sufficient methodology or if an alternative mechanism is recommended.

Response: We thank the commenter for raising this concern. We will develop and issue guidance to address cost reporting questions for OPOs with multiple DSAs.

Final Rule Action: After consideration of the public comments we received, we are finalizing changes to § 486.309 as proposed.

F. Non-Renewal of Agreement (§ 486.311) and De-Certification (§ 486.312)

To address the implementation of the tier system for re-certification of OPOs, we proposed to establish a new CfC at § 486.311 for non-renewal of an OPO agreement. Additionally, we proposed to revise § 486.312 to address enforcement actions that may result in de-certification of an OPO.

We proposed changes to address implementation of the tiered system for re-certification and competition from the December 2020 final rule and to clarify the difference between non-renewal of an agreement and de-certification. We also proposed to revise the public notice requirements for when there is a non-renewal or de-certification to clarify that CMS would be providing these notices.

We proposed that CMS would not renew an agreement with an OPO if the following conditions are met: the OPO's DSA is subject to a competition and the OPO is unsuccessful in the competition to retain its DSA. The OPO would not be afforded appeal rights for loss of a competition, consistent with our long-standing policy, as described in the 2006 final rule (see 71 FR 30998). We proposed that CMS would provide notification to the OPO at least 90 days before the effective date of the non-renewal and that the notice would state the reasons for non-renewal and include the end date of the agreement. We also proposed that CMS would not renew an agreement in the case of a voluntary termination of an agreement by an OPO.

In our proposed approach, an OPO with only tier 2 DSAs that fails to retain any of its DSAs in competition would be re-certified without designation to a DSA. This would permit the OPO to compete in any additional open competitions during the following 4-year certification period. If the OPO is successful in a concurrent or subsequent competition, assigned a DSA by CMS, or selected for an open DSA when there is insufficient time to conduct a competition, it could then be designated to another DSA during this period. If the OPO does not obtain a new DSA through competition, assignment, or selection (including circumstances where there is insufficient time to conduct a competition) for an open DSA by the end of the next re-certification cycle following the non-renewal of the OPO's agreement, it would not meet outcome measure standards for that cycle. Consequently, the OPO would be de-certified at that time. The OPO would have appeal rights for de-certification. While an appeal would not be available for the assignment of a DSA to tier 2 or the result of a competition, all OPOs are provided with a preview of their outcome measure results and an opportunity to raise concerns with the data before performance reports are finalized.

The current requirement for voluntary termination of an agreement is located at § 486.312. We proposed to relocate the voluntary termination of agreement provision from § 486.312 to new § 486.311 and remove the requirement that we would de-certify the OPO. An OPO voluntarily withdrawing from its agreement or ceasing to furnish organ procurement services has taken an affirmative step to end its duties under the OPO agreement, but that action does not entitle the OPO to appeal a de-certification on substantive or procedural grounds. As such, the withdrawing OPO would not be afforded appeal rights. The OPO would no longer have an agreement and would no longer be designated to any DSAs, as of the effective date determined by CMS.

For non-renewal of an agreement after a competition, we proposed that we would provide notification to the OPO at least 90 calendar days before the effective date of the non-renewal, and the notice would state the reasons for non-renewal and include the end date of the agreement.

We also proposed a public notice requirement consistent with the current public notice requirements at § 486.312 to inform the public in the affected service areas. We would inform the public of the date on which a new OPO will be designated for that DSA. We also proposed to retain the policy which states that no payment under titles XVIII or XIX of the Act will be made with respect to organ procurement costs attributable to an OPO that no longer has an agreement with CMS.

We proposed to revise the requirements at § 486.312 to clarify the actions we may take to de-certify an OPO. Specifically, we proposed that we may de-certify an OPO if the OPO no longer meets the requirements for certification at § 486.303, including the conditions for coverage at §§ 486.320 through 486.360. We proposed that we may de-certify an OPO if the OPO is designated only to tier 3 DSAs in the final assessment period at the end of the re-certification cycle as specified at 486.318(b)(6) and 486.316(b)(iii)(3)(A). We also proposed that we would de-certify an OPO if it is no longer designated to any DSA and does not have data available from the final assessment period to demonstrate compliance with the outcome measures at the end of the re-certification cycle. This would address the potential outcome of a tier 2 OPO that was re-certified but did not have an agreement renewed because it did not win a competition and was not otherwise assigned a DSA by CMS.

We also proposed to relocate and revise the provision allowing for immediate de-certification in cases of urgent need, such as the discovery of unsound medical practices.

We proposed to revise and relocate the requirements regarding notice of de-certification to the OPO. We proposed that except in cases of urgent need, the initial notice of de-certification would be provided to the OPO at least 90 calendar days before the effective date of the de-certification. In cases of urgent need, the notice would be provided at least 3 calendar days prior to the effective date of the de-certification. The notice would state the reasons for de-certification, explain the available appeal rights, and include the effective date of the de-certification.

Finally, we proposed to revise and redesignate the requirements pertaining to public notice of de-certification. We proposed to replace the requirement that the OPO provide public notice in situations of involuntary termination and de-certification with a new process that CMS will provide public notice. We proposed that CMS would notify the public within the service area of both the date of de-certification and the date that a new OPO will be designated for the DSA. We solicited public comment on these proposed changes in §§ 486.311 and 486.312. The following is a summary of the comments we received and our responses.

Comment: Several commenters were supportive of the proposed changes in clarifying the differences between non-renewal and de-certification in the competition framework. These commenters recommended advance notice and transition plans to allow for orderly transfer of operations to the successor OPO. A commenter recommended collaboration with HRSA in implementing changes to relevant information technology (IT) systems.

Response: We thank commenters for their support and recommendations. We are establishing notification requirements for non-renewal at § 486.311(c) and (d) for both the OPO and the public respectively. Additionally, we are finalizing a requirement at § 486.316(g) for transition plans to facilitate an orderly transfer of a DSA between an incumbent and successor OPO. CMS and HRSA have coordinated the transition of DSAs for several mergers and a recent de-

certification. We continue to collaborate to refine this process and ensure continuity of IT systems during the transition.

Comment: Many commenters recommended due process considerations for an OPO that received a notice of non-renewal due to competition loss and was therefore no longer designated to a DSA. Commenters stated that non-renewal of an OPO's agreement would effectively be the same as de-certification and the lack of due process protections was unfair and lacked transparency. A commenter stated that the absence of any mechanism to challenge the underlying competitive determination would be a serious procedural gap. Several commenters stated that CMS should ensure that procedural safeguards are commensurate with the operational and public health consequences of DSA removal and recommended that CMS establish a structured administrative review pathway for OPOs in this situation. Another commenter raised concerns for procedural equity, indicating that tier 3 OPOs were afforded a pathway to contest de-certification, while tier 2 OPOs that lost their DSA through a competitive process would not have such a pathway.

Response: We thank commenters for sharing their concerns but disagree with their recommendations. The competition process is designed to enable CMS to choose the OPO that is most likely to increase organ donation in the service area and thereby serve the best interests of organ donation, potential organ donors and recipients in the service area. OPOs with tier 2 DSAs that are unsuccessful in competition and no longer designated to a DSA may compete in concurrent or subsequent competitions for other DSAs or be assigned a DSA by CMS throughout the term of the re-certification cycle. While there could be a gap in designation, impacted OPOs may have multiple opportunities to demonstrate that they are the best qualified OPO for a specific DSA.

Assignment of a DSA to tier 2 is not a determination that the OPO designated to that DSA is out of compliance with the outcome measure requirements. An OPO with a DSA that meets tier 2 performance standards has met the minimum performance standards for re-certification and will be re-certified, provided that it also meets the process performance measures at §§ 486.320 through 486.360. However, it will not automatically retain its designation to the tier 2 DSA for another full agreement cycle. Instead, an OPO with a tier 2 DSA would compete to retain its designation to the DSA for another agreement cycle.

To clarify this distinction between re-certification and the retention of designation to a DSA, we are revising § 486.311 to clarify that when an OPO is unsuccessful in the competition process, as set forth at § 486.316(a)(2), and the OPO is no longer designated to the DSA, CMS will not renew its agreement for designation to that DSA. This means that the OPO would enter into a new Form CMS 576A (Health Insurance Benefits Agreement) to reflect its re-certification for the next 4 year cycle, but the OPO would no longer be designated to a DSA as identified on its Form CMS 576 (Request for Designation as an OPO). This clarification reflects that OPOs that meet the tier 2 thresholds for the outcome measures and are compliant with the process performance measures will be re-certified and will maintain an agreement with CMS reflecting their status as a certified OPO, but must be successful in competition for an open DSA (their original DSA or a different one) in order to have an agreement for designation to a DSA for another full agreement cycle. We are also making a conforming change to § 486.316(b)(2)(ii) to clarify that an OPO with a tier 2 DSA will not have the agreement for designation to a DSA renewed if it is not successful in at least one competition.

When an OPO's DSA is assigned to tier 3 based on performance in the final assessment period, on the other hand, the OPO has failed to meet minimum outcome measure standards in that DSA, resulting in either de-certification or removal of designation to the tier 3 DSA. In light of this adverse determination, OPOs with tier 3 DSAs are granted an appeal. Furthermore, as we have previously explained, allowing appeals of competition results would be unwieldy and would create uncertainty, both for the OPO that prevailed in competition and within the DSA (71 FR 30998). As a result, we do not believe that appeal of competition results would best serve the interests of organ donation in the DSA. While some commenters cite operational and public health concerns for transitioning a DSA, we note the public health considerations for the nearly 100,000 people on the organ transplant waiting list, many of whom will die waiting for a lifesaving transplant. While OPOs with tier 2 DSAs meet minimum outcome measure requirements, they may not be the best OPO to serve a DSA if there is a more capable OPO that can demonstrate the ability to procure more lifesaving organs.

Comment: Several commenters indicated that consistent turnover of DSA assignments risks undermining important community relationships and could negatively affect donation rates in affected communities. A commenter was concerned that DSA reassignments and associated changes will lead to major setbacks in the important work Tier 3 OPOs have done in reaching out to diverse communities, educating the community, and establishing trust. The commenter stated that the loss of personnel, programs, and expertise that these communities have come to know and trust could upset the progress that has been made and detrimentally impact organ donation rates in these communities.

Response: We appreciate the concerns expressed by these commenters and recognize that many OPOs have invested in building deep community ties. We believe every community should be served by a high performing OPO that meets our performance standards. Additionally, we believe it is vital to continue improving donation rates in diverse communities and replacing underperforming OPOs with higher performers that have a demonstrated record of overcoming challenges in their DSA is one way to further this goal. We anticipate that successor OPOs will apply the lessons learned in their own DSAs to newly designated DSAs and build upon those successes to engage all population groups throughout its newly designated DSA, including those groups associated with historically low donation rates in the DSA. Additionally, as CMS develops future requirements for new entities seeking to become certified OPOs, we anticipate developing and proposing criteria to evaluate their plans to engage all population groups for organ donation.

Comment: A commenter recommended CMS consider other factors to cure tier 3 performance in a DSA when the OPO would be de-certified or have its designation removed. The commenter recommended that CMS retain the OPO's designation to the tier 3 DSA in the following circumstances: (1) if there were no competitors for the DSA; (2) if the OPO had substantially improved performance in the DSA despite remaining in tier 3; (3) if the subsequent year's performance improved significantly; or (4) if performance during the assessment year was aberrant due to a natural disaster or other unusual circumstance. Another commenter recommended that CMS implement a process for an OPO to develop and submit a performance improvement or corrective action plan

that would include peer-assisted improvement initiatives with measurable goals and frequent reporting requirements.

Response: We thank the commenter for sharing these recommendations. As previously explained, the outcome measure performance standards are set forth at § 486.318, and we did not propose to modify those performance standards to allow for alternative pathways to compliance. Under section 1138(b)(1) of the Act and section 371(b)(1)(D) of the PHS Act, an OPO must meet the Secretary's performance standards to be recertified and to remain eligible for payment of its organ procurement costs under Medicare or Medicaid. Accordingly, an OPO that does not meet minimum performance standards on the outcome measures (tier 3) in any of its DSAs in the final assessment period is not compliant with the Secretary's performance standards and will be de-certified under § 486.312(a)(2). An OPO that meets the minimum performance standards in at least one of its DSAs is eligible to be re-certified, but will have its designation removed from any DSA in which its outcome measure performance qualified as tier 3 as specified at § 486.316(a)(3). However, CMS regulations do allow for an extension of an OPO's agreement cycle in one limited scenario. Specifically, under § 486.316(f), an OPO can seek a 1-year extension of its agreement cycle if there are extraordinary circumstances beyond the control of the OPO that has affected the data of the final assessment period so that it does not accurately capture their performance. An OPO must request this extension within 90 days of the end of the occurrence of the extraordinary circumstance but no later than the last day of the final assessment period.

We note also that nothing in the current requirements prevent an OPO from engaging in a peer-assisted improvement initiative with another OPO and we encourage underperforming OPOs to consider this activity in advance of the final assessment period. However, this type of arrangement cannot be utilized to remedy non-compliance with the outcome measures based on tier 3 performance in the final assessment period.

Comment: A commenter stated that they support maintaining CMS' authority to de-certify an OPO immediately in cases of urgent need, including unsound medical practices. The commenter stated that patient safety must remain the paramount concern, and CMS should not be constrained in addressing serious failures that pose imminent risk to donors or recipients. Another commenter stated that they advocate for low-performing OPOs to be de-certified and believes that every community deserves to be served by a high-performing OPO.

Response: We thank the commenter for the support of this provision. We believe it is important to be able to respond swiftly in the event of urgent need, such as the discovery of unsound medical practices. We have undertaken further actions to strengthen this provision by adding a definition of ''unsound medical practices'' which could trigger an urgent need de-certification decision. See Section X of this final rule for more information on the definition of ''unsound medical practices''.

Final Rule Action: After considering public comments, we are finalizing § 486.311 with modifications to paragraphs (a)(1) and (b) clarify that the non-renewal of an agreement after loss of a competition is limited to the OPO's agreement for designation to a DSA, rather than a non-renewal of an agreement for certification. Additionally, we are finalizing § 486.312 as proposed with a minor wording change at § 486.312(b) to align with the corresponding requirement at § 486.314(a)(1). In the proposed rule, § 486.312(b) stated ''Except in cases of urgent need, CMS gives written notice of the initial de-certification decision to an OPO at least 90 calendar days before the effective date of the de-certification.'' The corrected language in this final rule aligns with the title of § 486.314(a)(1) and is revised as follows: ''Except in cases of urgent need, CMS provides an initial notice of de-certification to an OPO in writing at least 90 calendar days before the effective date of the de-certification.''

G. Appeals (§ 486.314)

We proposed several changes to the appeals process. We proposed modifying the timeframes in the appeal process and converting all timeframes to calendar days. We proposed to codify a process for discretionary review by the CMS Administrator and clarify the appeal process for OPOs that are de-certified based on urgent need. Additionally, we proposed to allow an OPO to appeal the removal of a designation to a tier 3 DSA without de-certification for situations where an OPO has another DSA that is assigned to performance tier 1 or 2 in the final assessment period for re-certification. These changes would make sure that OPOs have timely appeal rights for any adverse determinations regarding an OPO's compliance with outcome measure standards in a particular DSA. For more details on the basis for our proposals related to the appeals process, see the January 2026 OPO proposed rule (91 FR 4209 through 4212).

We proposed to modify the time periods in this section for existing requirements from ''business days'' to ''calendar days'' to facilitate consistent implementation of the process. We also proposed to use ''calendar days'' for all proposed requirements to further facilitate consistent application.

Currently, the OPO has 15 business days from receipt of the notice to request reconsideration from CMS, and we proposed to change this to 20 calendar days. CMS currently has 10 business days from receipt of the reconsideration request to make a written reconsidered determination that would affirm, reverse, or modify the initial de-certification determination. We proposed to modify this to 15 calendar days to make a written reconsidered determination that would affirm or reverse the initial de-certification determination. We also proposed that CMS would have the right to extend this time based on a determination that additional time was necessary to thoroughly review and make a decision and the extension did not prejudice either party. Finally, we proposed to remove the option for the reconsideration official to ''modify'' the initial de-certification determination. If the de-certification decision was upheld, the OPO then would have 40 business days from receipt of CMS' reconsideration decision to request a hearing before a CMS hearing officer. The hearing officer would have to set a date for the hearing that was no more than 60 calendar days after receiving that request for a hearing and would have to render his or her decision within 20 business days of the hearing. We proposed reducing the number of days within which an OPO could request a hearing before a CMS hearing officer from 40 business days to 15 calendar days.

The hearing officer would be required to send the administrative record to both parties (for example, CMS and OPO) within 10 business days of receipt of the request for a hearing. Because the Office of Hearings now uses an electronic case management system in which both parties have access to each other's filings, the reconsideration official would not need to forward their administrative record to the hearing officer unless and until there had been a request for a hearing. We proposed that upon receipt of a request for a hearing, the hearing officer would

promptly request the administrative record from the reconsideration official. We also proposed that the hearing officer, within 15 calendar days of receipt of the request for a hearing, would send the administrative record to both parties, or make it available through their electronic filing system, rather than the current 10 business days.

We proposed establishing requirements related to the scope of review and burden of proof related to an appeal. We proposed that the scope of review would be limited to (1) de-certification of an OPO and (2) removal of designation to a tier 3 DSA. The appeal must be based on substantive or procedural grounds. We also proposed that the OPO would bear the burden of proof by a preponderance of the evidence to demonstrate that the adverse determination by CMS should be reversed.

Additionally, we proposed to change the time that the hearing officer would be allotted to render their decision to from 20 business days to 90 calendar days. We also proposed allowing the hearing officer to extend that time upon notifying both the OPO and CMS, if the extension did not unduly prejudice either of the parties and is necessary for the hearing officer to issue a legally sufficient decision. Consistent with CMS longstanding policy, the hearing officer could affirm or reverse the notice of de-certification. We proposed to add that the hearing officer could also affirm or reverse the removal of designation to a tier 3 DSA without de-certification. The hearing officer would then promptly forward the decision and the administrative record to the CMS Administrator.

We proposed to codify the process for discretionary review of the hearing officer's decision by the CMS Administrator. Specifically, we proposed that the CMS Administrator would have 30 calendar days from receipt of the hearing officer's decision to elect to review or decline to review the hearing officer's decision. If the CMS Administrator elected to review the hearing officer's decision within the 30-day period, the CMS Administrator would promptly notify the OPO and CMS of his or her decision to review and the parties' right to submit written arguments within 15 calendar days of the notification. If the Administrator did not elect to review the decision within 30 calendar days of its receipt, the hearing officer's decision would be final.

We proposed that within 45 calendar days of notification of the CMS Administrator electing to review the hearing officer's decision, the CMS Administrator would be required to render a final decision, in writing, to the parties. The CMS Administrator could affirm, reverse, or remand the hearing officer's decision to CMS. We believed that there might be circumstances in which the CMS Administrator would want CMS to conduct further review or have other instructions for CMS regarding the appeal. Hence, we proposed that the CMS Administrator could remand the appeal to CMS for any appropriate reason. Remanding the appeal means that the appeal would be sent back to CMS for re-evaluation and a new initial determination regarding de-certification or removal of designation for a DSA without de-certification. Also, if the appeal was remanded to CMS, the agency would comply with any instructions in the remand. We did not propose to establish remand authority for the hearing officer.

We also proposed that the CMS Administrator would have the right to extend the review time if he or she determined they needed more time to thoroughly review and make a decision, provided the extension did not prejudice either party. We proposed that the CMS Administrator's review would be limited to the hearing's administrative record developed by the hearing officer and written arguments submitted by the OPO or CMS.

We proposed that CMS' reconsideration decision on de-certification or designation removal would become final if the OPO did not request review by a hearing officer in the time allowed under these regulations, or after the CMS Administrator declined to review the hearing officer's decision, render a decision in writing to the parties, or did not render a final decision or a remand in writing to the parties within 45 calendar days of electing to review the hearing officer's decision (or by the extended deadline, if the Administrator extends the 45-day period).

As noted later in this section of the preamble, a decision would not take effect until (among other things) all administrative appeals were exhausted to avoid any undue prejudice to the OPO. Given the range of tasks that must be completed, we also proposed that CMS could offer to extend an OPO's agreement if additional time would be needed for completion of the appeals process, competition of the service area and, if necessary, transition of the service area to a successor OPO.

We proposed to clarify when the OPO's DSA would be opened for competition. Consistent with longstanding CMS policy, we proposed that an OPO would not be de-certified or lose its designation to a DSA until all administrative appeals were exhausted. If at the end of the appeals process the notice of de-certification or removal of designation has been confirmed, the decision would be final. At that time, the OPO's DSA would be opened for competition and a successor OPO would be chosen. CMS would then determine a transition period that was sufficient for the new OPO to take full responsibility for the DSA. After the transition period was determined by CMS, CMS would forward to the de-certified OPO a written communication indicating the effective date of de-certification. As of that effective date, Medicare and Medicaid payments would no longer be made for organ procurement costs attributable to the OPO. For an OPO that lost its designation to a tier 3 DSA without being de-certified, CMS would forward a written communication indicating the effective date of the decision. As of that effective date, Medicare and Medicaid payments would no longer be made for organ procurement costs attributable to the affected OPO for that particular DSA. We would not begin the competition process before the appeals process was exhausted.

We also proposed to address special considerations regarding appeals in cases of de-certification due to urgent need. The appeals process would be the same for an OPO de-certified due to urgent need regardless of the reason for the OPO's de-certification. However, if an OPO was de-certified due to urgent need, it could be de-certified immediately. In such circumstances, the affected OPO's service area would be reassigned to one or more other OPOs by the effective date specified in the notice of de-certification provided. Hence, if the de-certified OPO pursued an appeal, it would not be operating its DSA while proceeding through the appeals process.

We solicited public comments on these proposed changes to the appeals process. The following is a summary of the comments we received and our responses.

General Comments

Comment: Most commenters generally supported the proposed change from using business days to calendar days.

Response: We thank the commenters for their support. We are finalizing the proposed change from calendar days to business days.

Comment: Some commenters were concerned about the status of OPOs during the appeals process. They wanted to know what happens to their agreements with CMS and their

payments for organ procurement activities during that time.

Response: When an OPO is going through the appeals process after receiving an initial notice of de-certification for non-compliance with the CfCs or a notice of removal of designation to a tier 3 DSA without de-certification, the OPO is still certified and designated to its DSA(s). During this period, the OPO's agreement is still in effect, and the OPO will remain eligible for payment. If the de-certification decision or the removal of designation decision is upheld, this status continues until the effective date of the de-certification or removal of designation to the tier 3 DSA. However, as set forth in § 486.314(p), if an OPO is de-certified due to urgent need, the affected OPO's service area will be reassigned to one or more other OPOs as set forth at § 486.308(a)(4) by the effective date specified in the notice of de-certification provided under § 486.312(b). The OPO has 20 calendar days from receipt of that notice to file a request for reconsideration from CMS. The remainder of the appeals process proceeds as set forth in § 486.314. As the OPO's de-certification for urgent need is already in effect during the appeal timeframe, the OPO is not eligible for payment for organ procurement activities during the appeals process.

Comment: Some commenters questioned our authority to create an appeals process for OPOs and were concerned with the proposed timeframes. They indicated that with Medicare claim appeals there is typically a much longer timeframes for the provider to act, such as 120 calendar days to request a redetermination, 180 calendar days to file for a reconsideration, and 60 calendar days to request review by an administrative law judge.

Response: Section 371(b)(1)(D)(ii)(IV) of the PHS Act, added by the Certification Act,[15] requires the Secretary to issue regulations that provide for an OPO to appeal a de-certification to the Secretary on substantive and procedural grounds. Hence, an appeal process is explicitly required by statute and the Secretary delegated to CMS authority to implement this statutory requirement through the OPO CfCs. We are not persuaded by the commenters' argument regarding the extended timeframes allowed in the Medicare claims process, as that process applies to a matter entirely distinct from OPO certification. Every DSA can only have one OPO designated at a time, meaning that an OPO has a mandated monopoly on organ procurement services for an entire geographic area. An OPO that fails to meet the standards to be a qualified OPO should be removed as promptly as possible to reduce uncertainty in the OPO's DSA and support the entire organ donation and transplantation system. An OPO that receives an initial notice of de-certification (§ 486.314(a)(1), as finalized in this rule) continues to be designated for that DSA unless and until the OPO is de-certified. The DSA cannot be transitioned to a successor OPO until the appeals process has been exhausted. OPOs must be afforded the right to appeal a de-certification on substantive or procedural grounds; however, that appeals process must be conducted in a timely manner to reduce uncertainty in the DSA and protect the rights of the patients on the waiting list. We believe the proposed changes that we are finalizing in this rule not only provide the appropriate balance needed to provide OPOs an adequate opportunity to appeal a de-certification, but also ensure that the rights of the patients on the waiting list, including the right to have an OPO that is in compliance with the OPO CfCs and to avoid any unnecessary disruptions in the organ procurement and placement of organs, are preserved.

Comment: Some commenters were concerned that the appeals requirements were very burdensome and weakened the due process protections to which OPOs are entitled. Several commenters criticized the proposed changes to the appeals process, especially the change for OPOs to request a hearing from 40 business days to 15 calendar days, as denying OPOs' right to a meaningful due process in the appeals process. Commenters stated that OPOs facing de-certification deserve a meaningful appeals process with sufficient opportunity to prepare and defend against the de-certification. They stated that these appeals are complex and often require extensive preparation, such as review of multi-year performance and outcome data, statistical methods, hospital-level documentation, and thorough legal analysis. Commenters stated that this could be exceptionally difficult for smaller OPOs with fewer resources. Commenters further stated that the appeals process requires meaningful procedural protection, including clear standards, fair timelines, and transparent opportunities for participation. A few commenters recommended that the CMS hearing officer have the authority to grant filing extensions. This would provide flexibility for OPOs that need more time to file a request for hearing and still preserve their appeal rights.

Response: A request for the hearing is not a formal document in which an OPO is required to submit its arguments about why the OPO should not be de-certified. The request does not require all the information, data, or legal analysis needed for the hearing. It serves only as a notice that the OPO seeks a hearing before a CMS hearing officer. The OPO may continue preparing for the hearing, including reviewing relevant data and developing legal analyses, both before and after the request for hearing is filed. An OPO is free to file a request for hearing to preserve its appeal rights and later withdraw that request if, in the course of preparing for the hearing, it determines that it no longer wants to proceed with the appeal process. We believe that the proposed changes provide OPOs with clear, transparent standards for participation in the appeal process and a meaningful opportunity to appeal on substantive and procedural grounds, while still ensuring the appeals process moves forward in a timely manner to reduce uncertainty in the DSA and protect the interests of patients on the transplant waiting list.

Comment: Some commenters stated that the proposed changes to the appeals process granting CMS officials additional time, if needed, to fulfill their responsibilities without allowing OPOs to request additional time for required steps in the appeal process created an asymmetrical process that was inequitable and illegal. Other commenters were concerned about fairness and requested protection against conflicts of interest and for the hearing to have a standardized, objective process for all hearing officers. Some commenters recommended allowing the CMS hearing officer to grant extensions to file a request for a hearing.

Response: Section 371(b)(1)(D)(ii)(IV) of the PHS Act provides that an OPO is entitled to appeal a de-certification on substantive and procedural grounds. An OPO subject to de-certification for non-compliance with the CfCs will continue operating in its DSA pending resolution of any appeal unless the de-certification was based on urgent need. Accordingly, the appeals process must be efficient and timely to reduce any disruption to the organ procurement activities in the DSA and ensure that OPOs that fail to comply with minimum standards are removed as promptly as possible. We believe the requirements for appeals

[15] Public Law 106–505, section 701(c), 114 Stat. at 2347.

that are being finalized in this rule provide OPOs with adequate notice and a meaningful opportunity to pursue their appeal. Permitting CMS officials the opportunity to extend timelines supports this by assuring that CMS officials have enough time to adequately consider the OPO's arguments, particularly since CMS officials are likely to be responsible for multiple appeals simultaneously. In addition, the hearing officer may extend the timeframe for issuing its decision beyond 90 calendar days only if the hearing officer determines that 90 calendar days is insufficient for the hearing officer to develop the administrative record and render a legally sufficient decision and that extending the timeframe for issuing its decision would not unduly prejudice either the OPO or the government. The hearing officer must also provide notice of the extension to the OPO and the government.

With respect to the commenters' concerns about fairness and conflicts of interest, we want to assure the commenters and the public that CMS hearing officers are highly qualified and hear numerous cases involving CMS and other parties across a range of programs and providers and suppliers. In addition, the powers and responsibilities of the hearing officer are clearly set out in § 486.314.

We do not believe it is necessary to grant the CMS hearing officer authority to grant an extension to file a request for a hearing. The appealing OPO should have sufficient time to file the request. As previously explained, the request for a hearing serves only as a notice that the OPO seeks a hearing before a CMS hearing officer. It does not require all the information, data, or legal analysis needed for the hearing. The OPO may continue preparing for the hearing, including reviewing relevant data and developing legal analyses, both before and after the request for a hearing is filed.

Comment: Some commenters supported codifying a process for the CMS Administrator's review. However, several commenters did not support the discretionary nature of the review and stated that, due to the severe consequence of de-certification as the loss of eligibility for designation and reimbursement under Medicare or Medicaid, the CMS Administrator should be required to review every hearing officer decision.

Response: We agree with commenters that de-certification warrants a meaningful opportunity to appeal on substantive and procedural grounds, as required by statute. We proposed that under § 486.314(k)(3), each hearing officer's decision and the accompanying administrative record would be promptly forwarded to the CMS Administrator for his or her discretionary review. Thus, the CMS Administrator will have access to each hearing officer decision when deciding whether to exercise discretionary review. We continue to believe that it is appropriate to permit the CMS Administrator to exercise his or her judgement in determining whether to review the hearing officer decision. It is also important to note that prior to the CMS Administrator's discretionary review, the appealing OPO would have gone through reconsideration by a CMS official and a hearing before a CMS hearing officer. Thus, the appealing OPO has already had a meaningful review of its initial notice of de-certification or notice of removal of designation to a tier 3 DSA without de-certification.

Comment: Some commenters stated that the OPOs should be allowed to submit new evidence during the appeals process, especially during the CMS Administrator's review. They pointed out that data used for the outcome measures could be up to two years old. As such, the OPO's performance could have substantially improved before it receives the initial notice of de-certification.

Response: We acknowledge that there is a delay in obtaining the outcome measure denominator data due to the nature of the data source, and that the performance reflected in the calculated outcome measures reflect data collected two years prior. However, as stated previously, OPOs have a 4-year re-certification cycle. The data that will be used for the outcome measures are not collected until the third year of the re-certification cycle, meaning that OPOs had time prior to the final assessment period to improve their performance. CMS provides annual performance data reports to every OPO and requires those OPOs that have DSAs in tier 2 and tier 3 to conduct performance improvement projects that will contribute to improved performance on the CMS outcome measures. OPOs have sufficient time, regulatory structure, and incentives to improve their performance, including getting assistance from OPTN, HRSA, CMS, or consultants, before the data that will be used for re-certification begins to be collected. Hence, we believe OPOs have sufficient time to ensure compliance with the OPO CfCs.

Final Rule Action: After consideration of the public comments we received, we are finalizing changes to § 486.314 as proposed. However, we are modifying § 486.314(p) to reflect a revision to § 486.308(a)(4) which has been revised to indicate that CMS would only select a single successor OPO for designation to the DSA when there is insufficient time to conduct a competition.

H. Re-Certification and Competition (§ 486.316)

The current requirements at § 486.316 address OPO re-certification and competition. These requirements do not currently address one OPO being designated to more than one DSA and the impact this may have on the re-certification and competition processes. We proposed to make conforming changes to this section to clarify the requirements related to OPO designation, re-certification, and competition to also include situations when an OPO is designated to more than one DSA.

We proposed to address the impact of the OPO outcome measures on OPO designation at the time of re-certification. We proposed to determine OPO designation to the DSA based on its performance on the outcome measures and tier assignment in each DSA at the final assessment period of the agreement cycle. Depending on its performance on the outcome measures, an OPO's performance in each DSA would be assigned to tier 1, tier 2, or tier 3.

We proposed that an OPO with a DSA that is assigned to tier 1 would retain designation to the DSA for another agreement period. We also proposed that an OPO with a DSA that is assigned to tier 1 would be re-certified, provided that CMS also determined that the OPO is compliant with the requirements for certification at § 486.303, including the process performance measures at §§ 486.320 through 486.360 during the most recent survey. Furthermore, we proposed that an OPO that was compliant with the requirements of §§ 486.320 through 486.360 and that has a tier 1 DSA would be eligible to compete for any open DSAs.

We proposed that an OPO with a DSA that was assigned to tier 2 would have to successfully compete and be awarded a DSA through a competition to retain designation to a DSA for another agreement period. We also proposed that an OPO with tier 2 DSAs would also need to be found compliant with the requirements for certification at § 486.303, including the conditions for coverage at §§ 486.320 through 486.360 during the most recent survey to be eligible for re-certification. We proposed that an OPO that was compliant with the conditions for coverage at §§ 486.320 through 486.360 and had a

DSA assigned to tier 2 would be eligible to compete for any open DSAs. We also proposed that if the OPO was not successful in at least one competition, it would receive a notice of non-renewal. As finalized in this rule, § 486.311(a) clarifies that this notice of non-renewal is limited to the OPO's designation to the DSA and would not impact the OPO's agreement with CMS reflecting its status as a certified OPO (Form CMS 576A, Health Insurance Benefits Agreement). Because the OPO was re-certified, we proposed that it would remain eligible to compete in future competitions, be assigned a DSA, or be selected for an open DSA during the next re-certification cycle.

We proposed that an OPO with a DSA that was assigned to tier 3 would have the designation to the tier 3 DSA removed at the end of the agreement period. Additionally, we proposed that an OPO with all of its DSAs assigned to tier 3 would not be eligible to compete in competitions for any open DSAs. We proposed that an OPO that was designated to a DSA that was assigned to tier 3 in the final assessment period would receive one of two notices. The OPO would receive an initial notice of de-certification, as specified at § 486.314(a)(1), for an OPO that has no other designated DSA that is assigned to tier 1 or tier 2, or no other designated DSA that is pending evaluation of its outcome measures at the end of the re-certification cycle. The OPO would receive a notice of removal of designation to a tier 3 DSA without de-certification, as specified at § 486.314(a)(2), for an OPO that has another designated DSA assigned as tier 1 or tier 2, or another designated DSA that is pending evaluation of its outcome measures at the end of the re-certification cycle. We proposed that an OPO would have the right to appeal a de-certification or removal of designation to the DSA assigned as tier 3. If an OPO did not appeal the determination, or the OPO appeals and the determination is upheld after the appeal process is completed, the OPO's tier 3 DSA is opened for competition from other OPOs that qualify to compete for open service areas.

We also proposed updates to the re-certification and competition requirements. We proposed that an OPO would have to maintain compliance with the process performance measures at all times. We proposed that non-compliance with the requirements at §§ 486.320 through 486.360 in any DSA at any time during the re-certification cycle would result in the OPO receiving an initial de-certification determination and that the OPO would have the right to appeal the de-certification due to non-compliance with the requirements at §§ 486.320 through 486.360. If the OPO did not appeal the determination, or the OPO appeals and the determination was upheld after the appeal process was completed, the OPO's service areas would be opened to competition from other OPOs that were qualified to compete for open service areas.

We retained the existing policy that DSAs assigned as tier 2 or tier 3 in the final assessment period would be opened for competition, but proposed updated language to reflect that the tier assignment based on the outcome measures at § 486.318 would be specific to the DSA and not assigned globally to the OPO since OPOs may have more than one DSA. A tier 2 or tier 3 service area would be opened for competition from other OPOs that qualify to compete for open service areas. Competition for DSAs assigned to tier 3 would not begin until after any applicable appeal under § 486.314 had been exhausted.

We retained the existing criteria to compete for an open DSA, but proposed updated language to reflect that tier assignment for the outcome measures at § 486.318 would be specific to the DSA and not assigned globally to the OPO. To compete for an open DSA, an OPO would have to be designated to at least one DSA that meets the performance requirements for the outcome measures for tier 1 or tier 2, as specified at proposed § 486.318(b)(4) or (5), respectively. The OPO would also have to meet the requirements for certification at § 486.303 and would have to meet the process performance measures at §§ 486.320 through 486.360 during the most recent routine survey. Additionally, the OPO would have to compete for the entire open DSA. We proposed to revise these criteria to address competition eligibility for any OPO subject to non-renewal of their agreement for failure to be designated to a DSA after competition. We proposed that an OPO in this situation would be eligible to compete in additional competitions after its agreement expired and could enter into a new agreement with CMS, provided it had not been de-certified and met the criteria to compete at that time it entered the competition process that resulted in non-renewal. As explained in this final rule, we are clarifying that in this situation the OPO would enter into a new agreement with CMS reflecting its status as a certified OPO for the next re-certification cycle (Form CMS 576A, Health Insurance Benefits Agreement) but the OPO would no longer be designated to a DSA as identified on the Form CMS 576, Request for Designation as an OPO. This would enable the OPO to participate in subsequent competitions and enter into a new designation agreement with CMS if it was successful in a competition. If the OPO did not obtain a new DSA before the end of the next re-certification cycle, it would not be able to demonstrate compliance with the outcome measures for that re-certification cycle and would de-certified at that time.

Finally, we proposed a new requirement to facilitate DSA transitions. We proposed to codify the requirement for OPOs to cooperate during transitions following a competition to facilitate a smooth transition and continuity of organ donation activities in the DSA. We proposed that an incumbent OPO must cooperate with a successor OPO that is newly designated to facilitate an orderly transition of the DSA and submit a transition plan, as specified by CMS, that provides details on how all aspects of the OPO operation will be transmitted, including timeframes, to a new OPO. We proposed that the successor OPO must submit a transition plan and periodic reports, as specified by CMS, related to progress on its transition activities until the process is completed. We also proposed that the successor OPO would be required to provide a final notice to CMS no later than 30 calendar days after completion of the transition and prior to the end of the incumbent OPO's agreement.

We solicited public comment on these proposed changes to § 486.316. The following is a summary of the comments we received and our responses.

Comment: Several commenters supported the proposal to assess an OPO with multiple DSAs separately on the outcome measures. A commenter stated that evaluating each DSA separately on outcome measures ensures that OPOs serving multiple areas are held accountable for performance in each geographic region. Another commenter stated the specific proposals related to re-certification and competition for OPOs serving more than one DSA are logical and consistent with policies already finalized. Another commenter suggested that labeling the performance of the DSA rather than the OPO as a whole may decrease disincentives for high-performing OPOs to consider competing to provide service in a DSA with an outgoing underperforming (tier 3) OPO. Commenters stated that not only is this approach fair to an OPO on its face, but it may also advance the goal of ensuring continued provision of procurement

services to communities with an outgoing underperforming (tier 3) OPO.

Response: We thank commenters for these responses. Our intention for this proposal at § 486.316(a) was to support the provisions at § 486.309 that would enable an OPO to be designated to more than one DSA as well as mitigate the geographical consolidation of DSAs. We believe that evaluating DSAs separately on outcome measure performance, when an OPO decides to operate them separately, is a reasonable and equitable approach. This also supports OPOs in deciding how to best operate when expanding beyond their initial DSA.

Comment: A commenter requested clarification on how CMS would evaluate outcome measures when an OPO is designated to multiple DSAs and elects to merge or maintain separate DSAs. The commenter stated that each DSA is evaluated independently, resulting in the unit of accountability effectively shifting from the organization as a whole to the DSA level.

Response: We thank the commenter for seeking additional clarification on the evaluation framework. The framework of evaluating outcome measure performance at the DSA level enables CMS to evaluate an OPO both at the DSA level, carefully monitoring variations and enabling OPOs to conduct targeted performance improvement activities where they are most needed, while also retaining an overall evaluation and accountability structure that assesses compliance with the process measures at the organization level.

At § 486.316(b)(1), we address compliance with the process performance measures at §§ 486.320 through 486.360 and indicate that we will evaluate OPOs as a single entity across all DSAs. The process performance requirements are the broad operational requirements that are common across all DSAs and we expect compliance with these requirements at all times. Therefore, non-compliance with a process performance measure in one DSA would potentially impact an OPO's certification, affecting all DSAs if the OPO were to be de-certified. The OPO would have the opportunity to submit a corrective action plan to remedy the non-compliance and avoid de-certification, provided the plan of correction is acceptable in resolving the deficiency that resulted in the non-compliance determination.

At the time of re-certification, we will evaluate each DSA managed by an OPO separately on the outcome measures from the final assessment period as specified at § 486.316(a) to determine impact on DSA designation and subsequently make a re-certification decision based on the provisions at § 486.316(b)(2). Under this framework, an OPO that is designated to at least one DSA that is assigned to tier 1 in the final assessment period will be re-certified for another re-certification cycle, provided it is compliant with the process performance measures during the most recent survey as specified at § 486.316(b)(2)(i). Additionally, an OPO that is designated to at least one DSA that is assigned to tier 2 but is not designated to any DSA assigned to tier 1 in the final assessment period will be re-certified, provided it is compliant with the process performance measures during the most recent survey. The OPO will be eligible to compete in competitions for any open DSA but will not have its agreement for designation to a DSA renewed if it is not successful in at least one competition as specified at § 486.311(a)(1) or assigned a DSA under the provision at § 486.308(a)(4) or § 486.316(e) as specified at § 486.316(b)(2)(ii). Finally, OPOs with tier 3 DSAs in the final assessment period will have designation to those DSAs removed as specified at § 486.316(a)(3). We will consider the status of any other DSA in which the OPO is designated to make a re-certification decision as described at § 486.316(b)(2)(iii). If the OPO has no other DSA designated as tier 1 or tier 2, or no other DSA that is pending future evaluation of the outcome measures, as specified at § 486.318(c)(3) or (4), it will receive an initial notice of de-certification as specified at § 486.314(a)(1). If the OPO has another designated DSA assigned as tier 1 or tier 2, or another designated DSA that is pending evaluation of its outcome measures as specified at § 486.318(c)(3) or (4), it will be re-certified and receive a notice of removal of designation to a tier 3 DSA as specified at § 486.314(a)(2). This re-certification framework enables removing a DSA where an OPO is not meeting the outcome measure standards while maintaining the OPO's designation to DSAs where it has not been determined to be out of compliance on outcome measure standards.

Comment: A commenter urged CMS to provide details regarding the timeline for when the competition process will begin for open DSAs.

Response: Competition for tier 3 DSAs will occur once any administrative appeals have been exhausted. CMS will announce specific timelines and details for any competitions in advance of these events.

Comment: Several commenters recommended revisions to the criteria for selection. Other commenters recommended that CMS establish more objective criteria for selecting a successor OPO in a competition. Many of the commenters recommended giving weight to OPOs with a record of sustained performance improvement trajectories. Other commenters stated that incumbent tier 2 OPOs should be given priority when competing for their own DSA over other competitors.

Response: We thank commenters for these recommendations. We did not propose changes to the content of the existing selection criteria; therefore, we are not finalizing any changes at this time. However, we will consider these comments for potential changes to the selection criteria in future rulemaking. In the proposed rule we sought to clarify how we would apply the criteria under the tiered system for re-certification. Since implementing the 2020 final rule, OPOs have provided feedback expressing concern that CMS would rigidly apply the tiered structure in a competition and select a marginally better tier 1 OPO over a relatively high performing incumbent tier 2 OPO. They indicated that any benefit of selecting a higher performing OPO in this situation would be offset by the disruption from transitioning the DSA to another OPO. We indicated in the proposed rule that the selection criteria would not be applied rigidly when considering performance on the outcome measures and that we would consider the degree in performance differences among competitors and consider small differences to be relatively insignificant. Additionally, we do not believe that it is necessary to consider and weigh incumbency in a DSA independently of other factors because the current criteria will be sensitive to this issue when the performance difference between competing OPOs is relatively small. Additionally, in the proposed rule we discussed the issue of sustained improvements and how that would be considered when an OPO describes how it overcame barriers in its DSA.

Comment: Several commenters provided recommendations for considering contiguity in a competition. Some commenters recommended that CMS give greater weight to contiguity while others stated it is a less important factor.

Response: We continue to believe that contiguity is important, but it may not be the deciding factor in every situation. While contiguity may make the expansion of services easier from a logistics standpoint, it should not outweigh other considerations relevant

to decisions about the OPO who is most likely to achieve performance improvement and best serve a DSA. We are not revising the criteria at this time.

Comment: Several commenters requested greater specificity for expectations on what should be submitted to address the selection criteria. A commenter stated that CMS should provide a clear, objective definition of ''success overcoming barriers,'' specify what data and documentation CMS expects, and ensure the criteria are applied consistently and in a reviewable manner.

Response: In the proposed rule, we stated that the competition application process would provide an OPO the opportunity to describe the barriers it has faced and document its performance gains over time. The regulation at § 486.316(d)(4) states that we will consider an OPO's success in identifying and overcoming barriers to donation within its own service area and the relevance of those barriers to barriers in the open area. The regulation further states that an OPO competing for an open service area must submit information and data that describe the barriers in its service area, how they affected organ donation, what steps the OPO took to overcome the barriers, and the results. This information is important for competing OPOs in demonstrating a record of performance gains and a trajectory of improvement that could enable us to make the determination that the OPO is likely to continue improving, has the potential to achieve tier 1 status in the DSA in the near term, and should be designated to the DSA.

We realize that an OPO may face different challenges over different time periods as it works to address performance in its DSA. We believe that it is important for OPOs to use a data driven approach to identify areas for improvement, monitor changes over time, and document actual performance improvement. Additionally, we expect clear identification of the barriers and evidence of a plan to address those barriers. Qualitative information can augment quantitative results in describing improvements. Data may include data reported to the OPTN, CMS outcome measures, and/or other data and information that is part of the OPO's QAPI program. Some OPOs have suggested that they have their own data teams that independently calculate and stratify CMS outcome measures to analyze performance. We encourage other OPOs and the SRTR to consider this approach as well. The SRTR could include this type of information in their OPO Specific Reports (OSRs).[16]

Comment: Several commenters shared concerns related to the proposal for DSA transitions, highlighting a range of issues that they believe may materialize. Commenters stated that there would need to be close coordination and cooperation among the incumbent OPO, successor OPO, and CMS since the competition and transition periods would occur over a relatively short timeframe. Several commenters stated that the incumbent OPO may have difficulty maintaining staff and services throughout the duration of the transition. Other commenters highlighted non-profit status requirements and State requirements such as licensure that would need to be met. A commenter mentioned that the successor OPO needed sufficient time to establish agreements with donor hospitals. Another commenter questioned how the transition would occur with two OPOs operating simultaneously during the transition.

Response: We acknowledge that the transition of a DSA to a successor OPO will be a significant undertaking, which is a reason we are codifying a requirement for OPOs to cooperate to facilitate a smooth transition and continuity of organ donation activities in the DSA. Additionally, we note the competition application procedures in the State Operations Manual Chapter 2 (CMS Pub 100–07) include many planning and transition elements to be included in the applicant's transition plan to support a stable transition of a DSA should the competitor be successful in a competition and eventually designated to the DSA. CMS worked closely with the OPOs involved in the recent transition of the Southern Florida DSA that was previously designated to the Life Alliance Organ Recovery Agency to monitor the process, assist in addressing any challenges, and ensure there was sufficient time to complete all requirements necessary to transition the designation to the successor OPO. Since only one OPO can be designated to a DSA, it is critical that all requirements be completed to transition the designation at the appropriate time. Therefore, the process must ensure that only one OPO is designated to a DSA at any given time with designation for the incumbent ending at the same time designation to the successor OPO begins. This activity also requires close coordination between CMS and HRSA to ensure a seamless transition in the information technology system that transmits information to support organ allocation activities.

Comment: A commenter stated that CMS does not have the authority to force a de-certified or replaced OPO to bear the costs of transitioning to a new OPO, specifically, the transfer of proprietary information without providing adequate compensation to the incumbent OPO for these activities. The commenter interpreted the proposed rule as suggesting that OPOs would be forced to transfer ''procedural manuals and other materials used in conducting OPO operations,'' that could include proprietary operational data, internal quality improvement analyses, workflow optimizations, and institutional knowledge developed by the incumbent OPO over an extended period of time.

Response: We thank the commenter for sharing this concern but disagree with their interpretation of the proposal. The requirement that was proposed at § 486.316(g) addresses transition of a DSA and requires that an incumbent OPO submit a transition plan that would provide details on how all aspects of the OPO operation will be transmitted, including timeframes, to a new OPO. This is separate from the existing information management requirement at § 486.330(d), most recently updated in our 2006 final rule, that OPOs must maintain data in a format that can readily be transferred to a successor OPO. Records and data subject to this requirement include donor and transplant beneficiary records and procedural manuals and other materials used in conducting OPO operations, but only to the extent necessary to ensure uninterrupted service by a successor OPO. An OPO should discuss any concerns it has regarding information sharing with CMS during a transition.

We expect the incoming OPO to have its own operations plan, including documentation and activities such as operational policies and procedures, QAPI data collection, and training programs, to serve the DSA in a way that improves performance, such that the type of information that the commenter characterizes as potentially proprietary would not be necessary to ensure uninterrupted service. Additionally, section 2812.4 of the SOM describes competition application materials to be submitted by an OPO competing for the DSA, including a transition plan that would address many of the operational aspects needed to transition the DSA. However, DSA-

[16] Organ Procurement Organization Reports (OSR). *https://www.srtr.org/transplant-professionals/organ-procurement-organization-report/organ-procurement-organization-reports-osr/*. Access May 27, 2026.

specific information maintained by the incumbent and necessary to ensure uninterrupted service, such as donor and recipient data, must be maintained in a format that can readily be transferred to a successor OPO and provided to CMS in the event of a transfer, consistent with the longstanding requirement set forth in § 486.330(d). Given that an OPO is required under § 486.330(d) to maintain this information in a format that can readily be transferred to a successor OPO, we would not expect the OPO to incur significant costs related to the transfer of such information.

Final Rule Action: We are finalizing the proposed changes to § 486.316 with a modification at § 486.316(a)(2) to address the impact of outcome measures to OPO designation when an OPO is assigned a new DSA by CMS. We are clarifying that when DSAs are assigned by CMS under the provisions at § 486.308(a)(4) or § 486.316(e) as discussed in section III.D., we will not open any tier 2 DSA managed by that OPO for competition until a full 4-year re-certification cycle is completed for the newly assigned DSA. We are also clarifying the language at § 486.316(b)(1) regarding the notice to the OPO. It is being revised from ''initial de-certification determination'' to an ''initial notice of de-certification'' as specified at § 486.314(a)(1). Additionally, we are revising § 486.316(c)(2) to clarify that a competition loss would result in non-renewal of the agreement for designation to a DSA.

I. Outcome Measures (§ 486.318)

We proposed to remove obsolete outcome measure provisions that expired on July 31, 2022. The requirements for the previous outcome measures that were superseded by the December 2020 final rule are located at § 486.318(a) through (c). These requirements are no longer in effect and have been superseded by new requirements at § 486.318(d) through (f). We proposed to remove the obsolete requirements at paragraphs (a) through (c) and to redesignate paragraphs (d) through (f) as paragraphs (a) through (c). We proposed a conforming change at the proposed redesignated paragraph (a)(1) (currently paragraph (d)(1)) by removing the reference to paragraph (d)(2) and replacing it with paragraph (a)(2). We proposed a conforming change at the proposed redesignated paragraph (b)(5) (currently paragraph (e)(5)) by removing the reference to paragraph (e)(4) and replacing it with paragraph (b)(4). We proposed a conforming change at the proposed redesignated paragraph (b)(7) (currently paragraph (e)(7)) by removing the reference to paragraphs (e)(4), (5), and (6) and replacing it with paragraphs (b)(4), (5), and (6).

We also proposed revisions to address OPOs managing multiple service areas, such as replacing ''OPO'' with ''DSA'' when referencing the outcome measures as applied to each DSA. We proposed tailored timelines for assuring OPO accountability in cases of adding new DSAs due to a change of control, ownership, or service area (CHOW), an expansion following a competition, or an expansion due to CMS assignment. Specifically, we proposed that if an OPO expands through the CHOW process after January 1 of the first year of the agreement cycle, the OPO would be held accountable for its QAPI responsibilities related to outcome measure performance in the new DSA once 12 calendar months of data are available. The timing of the CHOW in the re-certification cycle will impact whether the OPO is assessed for its performance on the outcome measures during the final assessment period for the current re-certification cycle or the subsequent re-certification cycle. For OPOs that acquire a new DSA through competition or CMS assignment after January 1 of the first year of the agreement cycle, we proposed that outcome measure accountability would apply: (1) for QAPI purposes, once 12 calendar months of data are available; and (2) for re-certification purposes, in the final assessment period of the following re-certification cycle. We proposed these changes based on the nature of the transaction and availability of data and information to support the change. For instance, a voluntary merger would provide a new OPO with the sharing of critical insights into the existing operations; access to proprietary data sets and internal analyses; enable pre-formed relationships and contacts; leverage established financial, personnel, and physical resources; and include other intangible elements that smooth a transition. This greatly impacts an OPO's preplanning activities and readiness to assume responsibility for a new DSA. An OPO that has won a competition or has been assigned an open DSA when no OPO competes for it must begin with significantly limited information and resources. OPOs in these situations could have large information gaps coupled with potentially significant expansion demands. Therefore, we believe that an OPO that assumes responsibility for a new DSA after a competition or has been assigned a DSA by CMS should have an additional amount of time to demonstrate improvement before being held accountable on its performance for re-recertification purposes.

We solicited public comment on these proposed changes to § 486.318. The following is a summary of the comments we received and our responses.

Comment: Several commenters recommended that timeframe for accountability on the outcome measures for a new DSA acquired through a change of control or ownership or service areas, competition, or assignment by CMS should be the same. A commenter stated the proposal makes an arbitrary distinction between merger and competition. A commenter stated that the proposal puts OPOs that participate in mergers at a disadvantage due to the shorter timeframe for assessment on the outcome measures and risks related to a successor OPO taking over a DSA. Other commenters stated that impactful changes may take longer than 12 months with one commenter stating that operational integration in healthcare mergers typically unfold over a multi-year horizon due to the complexities involved. These commenters indicated that the timeframe for organizational stability as well as performance improvement is years. A commenter stated that last-minute changes will be more challenging even with good faith efforts and will take longer time frames.

Response: We understand the concerns of commenters and our proposed approach that we will be finalizing balances providing an appropriate level of time for improvement with the statutory requirements for performance accountability. We do believe there is a difference in challenges faced between a change of control or ownership or service area (§ 486.310), being awarded a DSA in a competition (§ 486.316(d)), or being assigned a DSA by CMS (§ 486.308(a)(4) or § 486.316(e)) and that we have provided the appropriate amount of time under each circumstance. We note that a change of control or ownership or service area that happens prior to the start of the final assessment period would be accountable for the outcome measures in the same re-certification period. Any changes after the start of the final assessment period would not have outcomes data available at the time of re-certification so the OPO would not be assessed for compliance on the outcome measures in the new DSA for re-certification purposes until the final assessment period of the next re-certification cycle. We believe the prior

planning that is afforded to OPOs in a change of control or ownership or service area warrants accountability on the outcome measures at that time when that data is available at the time of re-certification. Therefore, we will be finalizing this provision as proposed.

Comment: Several commenters were supportive of the changes related to accountability for the outcome measures when an OPO is designated to a new DSA. A commenter stated the different scenarios described in the proposed rule appropriately account for transition periods and the time needed for a new OPO to implement its operational approach in an acquired DSA. A commenter stated that they support revising the requirement for when CMS will hold an OPO accountable on the outcome measures when it takes over another OPO's DSA. Another commenter stated the timeframe for an OPO assuming responsibility of a DSA after a competition is appropriate.

Response: We thank commenters for support of this approach for tailoring accountability to the nature of the transaction, the availability of outcomes data, and the challenges anticipated with the different reasons for designation of a new DSA.

Comment: Several commenters requested clarity on how this provision would be implemented. A commenter stated CMS should specify which data period applies before performance accountability takes effect and how performance will be measured during transitional phases. Another commenter stated that CMS should clarify how it will measure performance for OPOs that assume responsibility for new DSAs following de-certification or reassignment, particularly given that the current outcome measures rely on data with a 1-to 2-year data lag.

Response: We appreciate the opportunity to provide clarity on this provision. We will provide the 2026 through 2030 re-certification period as an example. In the event of a change of control or ownership or service area (§ 486.310) that occurs prior to the start of the final assessment period in 2028, meaning prior to January 1, 2028, the OPO would be held accountable on the outcome measures in the new area at the time of re-certification in 2030. If the change was approved after the start of the final assessment period, outcome data would not be available so the OPO would be held accountable on the outcome measures for re-certification purposes for the first time in the new area in 2034 with outcome measures from 2032 (see § 486.318(c)(3)). Alternatively, an OPO that is designated to a DSA by assignment (§ 486.308(a)(4) or § 486.316(e)) or as the result of a competition (§ 486.316(d)) at any point during the 2026 through 2030 re-certification period, would be held accountable on the outcome measures in the new DSA for re-certification purposes for the first time in the new area with outcome measures from the final assessment period (2032) of next re-certification cycle (2030 through 2034). In each instance, the OPO would be surveyed at the time of re-certification in 2030 and must be in compliance with all process measures passing the survey at that time to be recertified. Additionally, an OPO that is designated to a DSA by assignment (§ 486.308(a)(4) or § 486.316(e)) would not have its original or new DSA opened for competition at the end of the re-certification cycle (for example, 2030) if the OPO's performance in those DSAs qualifies for tier 2 in the final assessment period.

Final Rule Action: We are finalizing the changes to § 486.318 as proposed.

J. Human Resources (§ 486.326)

We proposed to revise the medical director requirement to specify that an OPO's medical director would be required to be a physician licensed in at least one of the States or territories within one of the OPO's service areas or as required by State or territory law or by the jurisdiction in which the OPO is located. This proposed change was intended to accommodate the proposal that an OPO may be designated to more than one DSA while still having a single medical director. We also proposed revising personnel qualifications for other OPO staff that engage in clinical practice, whether they are in explicitly clinical positions or other positions in which clinical decision making or actions are expected. We proposed to require that personnel performing clinical duties be legally authorized (licensed, certified, or registered) in accordance with applicable Federal, State and local laws. Furthermore, we proposed that these staff would be required to act only within the scope of the individual's State license, certification, or registration. Finally, we proposed that the individual's licensure, certification, or registration be required to be kept current at all times. While OPOs are already required by § 486.326 to ensure that all individuals who provide services and/or supervise services, including services furnished under contract or arrangement, are qualified to provide or supervise those services, we proposed these changes due to the expertise required to fulfill the broad responsibilities and functions of OPOs. These responsibilities span a range of activities from educating donor hospitals to conducting internal QAPI activities to implementing donor management protocols. We proposed licensure requirements to establish minimum qualifications to assure quality and to facilitate more organ transplants.

We solicited public comment on these proposed changes in § 486.326. The following is a summary of the comments we received and our responses.

Comment: CMS received a small number of comments related to the changes to the medical director requirement. Commenters requested more flexibility so that OPOs could have more than one medical director or be able to fulfill this role through flexible staffing models with multiple staff filling this position at various times.

Response: For purposes of clear and direct accountability, we require a single individual to fulfill the role of medical director and be responsible for the overall medical direction of the OPO's operations. Currently, the medical director must be licensed as a physician in at least one of the States or territories within the OPO's service area or as required by State or territory law or by the jurisdiction in which the OPO is located. Many OPOs currently have multi-state DSAs and have been operating under this requirement since it was implemented in the 2006 final rule (71 FR 30982). We continue to believe that a single person should be accountable for overall medical direction of an OPO's activities. Our proposed change to this provision is limited to a conforming change to reflect that an OPO may be designated to more than one DSA. Therefore, we are finalizing this requirement as proposed.

Comment: Many commenters raised concerns about the practical implications of requiring personnel performing clinical duties to be legally authorized (licensed, certified or registered) in accordance with applicable Federal, State and local laws, and to act only within the scope of the individual's State license, or State certification, or registration. Commenters indicated that the organ procurement and transplantation workforce operates in a unique, specialized, and complex clinical environment and that much of the work performed by OPO staff does not require medical licensure because it is not medical treatment. Commenters stated that licensure frameworks are focused on treatment of living patients and that State and local laws and regulations do not contemplate licensure of professionals engaged in deceased donor management and organ recovery.

Commenters highlighted that State licensure laws, including nurse and physician practice acts, are written to govern the care of living patients and do not define or contemplate the management of a legally deceased individual and drew the distinction that supporting clinical teams in donor management is operationally distinct from direct patient care. Additionally, commenters stated that there are many clinical roles in the OPO industry for which there is not a role-specific licensure, certification, or registration. Some commenters noted that nurses and paramedics, disciplines for which State licensure exists, often coordinate donations or transplants and that these non-clinical coordination tasks do not require the same licenses as working with living patients. A commenter stated that strict reliance on State licensure standards would ignore the specialized, multidisciplinary scope of practice inherent to organ procurement and another stated that if CMS were to implement this proposal, rigid application of State-specific licensure for every staff role would be problematic because no State-specific licensure requirement exists for every OPO staff role. Some commenters noted that organ recovery procedures are often completed by surgeons that received training in other countries and are not currently board-certified in the United States and by non-physician practitioners that are not typically licensed to perform surgical procedures on living patients. Commenters stated the proposal could create significant operational and compliance challenges for OPOs that would negatively impact the OPO workforce and donation activities. The commenters stated that requiring licensure of these procurement staff would be incredibly challenging, if not impossible, and suggested that such a requirement would negatively impact OPO ability to maintain the current level of donor cases by strictly relying only on fellows or transplant surgeons in an OPO's service area. Commenters stated the proposal could create significant operational and compliance challenges for OPOs that would negatively impact the OPO workforce and donation activities. In place of licensure requirements, some commenters focused on OPO onboarding and training processes and stated that CMS requirements for OPO staff should focus on training and demonstration of specific skills.

Response: We thank commenters for articulating the unique concerns and needs of the OPO workforce. While it was not our intent to require licensure for individuals that only perform non-clinical work, such as coordination logistics and obtaining consent for donation, we understand that the roles may be mixed and blurred within OPO operations such that operationalizing our original intent may create staffing difficulties that ultimately undermine organ donation and transplantation, contrary to our policy goals. We are committed to establishing CfC requirements to assure the safety of patients who may become donors and organ recipients. We continue to believe that there is an opportunity to better ensure such safety through the establishment of more robust personnel qualifications and training standards. We will work with HRSA, the OPTN, and our OPO partners to explore ways to drive improvements in OPO staffing that support safe organ procurement and more lifesaving transplants. Upon consideration of the public comments received, we are not finalizing the proposed requirement at § 486.326(e) for licensure at this time and will consider the information shared in any future rulemaking in this area.

Comment: While a commenter stated that the educational infrastructure to support a national credentialling requirement does not exist because there's only a single specialized transplantation and donation sciences training program serving the entire country, several other commenters stated that CMS should recognize national credentialing through the American Board for Transplant Certification (ABTC) as nationally recognized standards for training and competency. The commenters stated certifications for transplant procurement coordinators and transplant preservationists represent nationally recognized training and competency standards for personnel involved in organ donation coordination and recovery operations. The comment noted that there are currently 1,175 Certified Procurement Transplant Coordinators working directly in OPO environments across 48 OPOs. Another commenter stated that it is developing specific standards related to organ recovery for clinical personnel who procure organs and is advocating for a certification program for organ recovery staff.

Response: We thank commenters for this information. We note the certifications referenced by commenters assist in addressing the multidisciplinary roles fulfilled by OPO staff. While we are not finalizing the proposed licensure requirements at § 486.326(e) at this time, we encourage OPOs to apply existing standards for training and competency, as well as existing certification programs, to their hiring standards to support improvements in safety and performance.

Final Rule Action: After considering public comments, we are finalizing the medical director requirement at § 486.326(d) as proposed. However, we are not finalizing the proposed licensure requirement at § 486.326(e) at this time. We may consider comments from the licensure proposal in future rulemaking.

K. Information Management (§ 486.330)

To assure the accuracy of data reported to the OPTN and the integrity of the CMS donation rate outcome measure that uses data reported by OPOs regarding pancreata procured for islet cell research, we proposed to establish a new documentation requirement specific to organs procured by OPOs for research, including pancreata procured for islet cell research. We proposed that OPOs would maintain records regarding the disposition of organs recovered and sent for *bona fide* research studies, including information identifying approval by an institutional review board (IRB) or other formal authorizing body, as appropriate, research institution, principal investigator, and contact information. This recordkeeping would foster OPO accountability in the responsible disposition of any organ sent for research, including pancreata that are used for islet cell research, and be consistent with existing OPO practices for maintaining records regarding the disposition of transplanted organs. CMS would use the survey process to review OPO organ disposition records and may conduct validation efforts to confirm their accuracy. We solicited public comment on these proposed changes to § 486.330. The following is a summary of the comments we received and our responses.

Comment: Several comments requested CMS to define ''qualified researcher'' and ''bona fide research''. Another commenter recommended that CMS clarify that OPOs can base documentation on the principal investigator's home institution Institutional Review Board review and indicate that a separately arranged review is not necessary.

Response: We appreciate the commenters' requests for additional clarity related to these terms and the associated documentation requirements. In the 2020 final rule, we clarified that in counting pancreatic islet cell research for inclusion in the outcome measures, only bona fide research conducted by a

qualified researcher would be included (85 FR 77937). In memorandum QSO–24–19–OPO,[17] published August 29, 2024, addressing the reporting of data related to pancreata procured for research, we noted that research approved by the National Institutes of Health would be one example of bona fide research conducted by a qualified researcher. We have not specifically defined ''qualified researcher'' or ''bona fide research.'' We are relying on OPOs to provide organs for research to qualified researchers for bona fide research based on accepted industry standards and practices. This may involve placement directly to a researcher, institution, or to an intermediary that facilitates placement of the organs. Records related to organ disposition must provide sufficient information to validate disposition of the organ as it is coded in the OPTN data set. The records to be maintained include, but are not limited to, information documenting approval from an IRB or other formal authorizing body, as appropriate, research institution, principal investigator, and study contacts for the research. These records may be utilized if validation of the information is required at a later time.

Comment: A commenter recommended additional clarification on the types of documentation or information that could be used for record keeping purposes. The commenters recommended items such as researcher credentials, statements of research purpose with a description of how the organ would be used, material transfer agreements, and attestation forms. The researcher also suggested that CMS require OPO governing boards to periodically review research programs documentation against regulatory requirements and formally approve participation in research activities, specifically referring to pancreas research activities.

Response: We appreciate this comment and recommendations. We believe the current record keeping requirements are written broadly enough to capture the information recommended by the commenter; however, we encourage OPOs to record all available and necessary information to validate final disposition of organs sent for research. We also realize that in some instances there may be limited information provided to the OPO. An OPO should decide if the records received justify the final disposition of the organ adequately to appropriately code the information for OPTN reporting purposes. We did not propose for OPO governing boards to review research program documentation against regulatory requirements and formally approve participation in research activities as we believe this type of activity is a fundamental responsibility that is already under the purview of governing boards.

Comment: A commenter recommended that documentation expectations and validation approaches overlap with or include OPTN definitions, documentation expectations and validation approaches, and that CMS and HRSA work together to ensure consistency and safeguard data integrity while supporting continued advancement of islet cell research. Additionally, the commenter stated that CMS should clarify permissible research uses of pancreata, including circumstances where organs are designated for research prior to confirmation of a specific protocol or IRB approval.

Response: We thank the commenter for these recommendations. As CMS previously clarified in a memorandum issued January 18, 2024,[18] pancreata must be used for islet cell research or islet cell transplantation, consistent with PICTA 2004, to be included in the outcome measures. Moreover, we are finalizing changes to the definition of ''organ,'' such that pancreata procured for islet cell research will no longer be counted in the transplantation rate. We also note that CMS has previously worked with HRSA to revise and clarify coding for pancreata submitted for research (See QSO–24–19–OPO).[19] If an OPO is unable to obtain records demonstrating the pancreata was used for islet cell research, it should not code the disposition as ''accepted for islet cell research''. In regard to data integrity, we note that documentation expectations and validation approaches associated with data reporting requirements under the OPTN final rule (§ 121.11(b)(2)) [20] apply to all OPTN members reporting information to the OPTN. Additionally, the OPTN information technology system, UNet, terms of service [21] also include a requirement for data accuracy. OPOs, as OPTN members, must comply with these requirements for data integrity.

Final Rule Action: We are finalizing the requirement at § 486.330(b) as proposed.

L. Quality Assessment and Performance Improvement (QAPI) (§ 486.348)

We proposed revisions to the existing QAPI standards to revise and clarify the requirements for tracking adverse events and establish new requirements for monitoring medically complex organ performance.

We proposed to relocate the adverse event examples included in the current definition of ''adverse event'' to the QAPI requirements and expand the list from three to six categories, including: transmission of infectious or communicable diseases or malignancies; avoidable loss of medically suitable potential donors; deviations from standards of practice in evaluation and management; delivery of a wrong organ or blood type mismatch; organs lost or delayed in transit; and organs arriving in unsuitable condition. For greater specificity and to avoid confusion, we proposed to replace ''the wrong organ'' with ''an organ that was not for the intended organ recipient''. We also proposed to remove the two references to ''beneficiary'' that currently appear in the examples in the ''adverse event'' definition. All OPOs must comply with the OPO CfCs, which apply to all patients regardless of payor source. Hence, the term ''beneficiary'' in the OPO CfCs is not appropriate. We proposed to remove the two references to ''beneficiary'' and instead use ''organ recipient''.

To further the goal of improving procurement and transplantation of medically complex organs, we proposed to require each OPO, as part of its QAPI program, to: (1) assess its policies and procedures regarding medically complex donors and organs to ensure that opportunities for recovery and placement are being optimized; (2) assess its performance by tracking, at least annually, the number of medically complex donors from whom consent was obtained, organs recovered, and medically complex organs transplanted; and (3) implement improvement actions when opportunities are identified.

We solicited public comment on these proposed changes to § 486.348. The following is a summary of the comments we received and our responses.

Comment: Some commenters were concerned about how their QAPI programs would affect any enforcement actions. They were concerned that information contained in their QAPI program could result in deficiencies or

[17] *https://www.cms.gov/files/document/qso-24-19-opo.pdf.*

[18] Definition Clarification. *https://www.cms.gov/files/document/qso-24-04-opo.pdf.*

[19] Reporting Data Related to Pancreata Procured for Research. *https://www.cms.gov/files/document/qso-24-19-opo.pdf.*

[20] OPTN Final Rule. *https://www.ecfr.gov/current/title-42/chapter-I/subchapter-K/part-121.*

[21] UNOS Systems Terms of Use. *https://unos.org/wp-content/uploads/2023-UNOS-Systems-Terms-of-Use.pdf.*

otherwise negatively impact them. They also expressed concerns about how these requirements would be enforced, especially if they failed to identify any incident as an ''adverse event'' that a surveyor believed should have been identified as such.

Response: The QAPI requirements will be enforced through routine, and possibly complaint, surveys. Hence, the QAPI requirements will continue to be enforced as they have been. Surveyors will utilize Appendix Y of the State Operations Manual (CMS Pub 100–07) to guide survey activities.[22]

Adverse Events

Comment: Many commenters expressed concern regarding an adverse event being attributed to an OPO when another party, such as the donor hospital or transplant program, is responsible for the incident. They pointed out that an adverse event could occur during the organ recovery process, but the incident could be caused by an action or omission by the donor hospital or transplant program and not the result of any action or omission on the part of the OPO. This could result in the OPO being cited for a deficiency or other enforcement action and negatively impact their performance or outcome measures or re-certification. Commenters requested consistent guidance on how responsibility would be attributed for adverse events.

Response: We understand that the action(s) or omission(s) that result in an adverse event can be complicated and could even involve multiple parties. However, the party responsible, whether it is the OPO, donor hospital, or transplant program, would be incident specific as determined by the OPO's investigation. Hence, it would be inappropriate for us to provide specific guidance on attribution. This is why OPOs are required to establish policies to not only identify but also to report, analyze, and prevent adverse events that occur during the organ donation process (§ 486.348(c)(1)). Complying with this requirement is not an admission of responsibility by an OPO. An OPO's investigation could conclude another party was responsible for the adverse event; however, the OPO would still be responsible for conducting a thorough analysis of any adverse event and must use the analysis to affect changes in the OPO's policies and practices to prevent repeat incidents (§ 486.348(c)(2)). If the OPO's investigation concludes that another party was responsible for the adverse event, the OPO would need to work with that other party to address actions to take to prevent the adverse event from reoccurring in the future.

Comment: Some commenters requested clarity on what ''avoidable loss'' means in proposed § 486.348(c)(3)(ii), which identifies ''avoidable loss of a medically suitable potential donor for whom consent for donation has been obtained'' as an example of an adverse event.

Response: This example was finalized in the 2006 final rule (71 FR 31046). We only proposed moving the example from the definition in § 486.302 to the QAPI requirements and did not revise any of the wording or meaning of this phrase. We believe that whether the loss of a medically suitable potential donor was avoidable should be based upon the OPO's judgement. If the OPO is unsure whether the incident should be considered an avoidable loss, we would encourage the OPO to seek guidance from CMS.

Final Rule Action: After consideration of the public comments we received, we are finalizing the requirement at § 486.348(c)(3) as proposed.

Medically Complex Donors and Medically Complex Organs

Comment: Several commenters supported the emphasis or focus on medically complex donors and medically complex organs. However, a few commenters thought OPOs were already actively pursuing medically complex donors and medically complex organs.

Response: We thank the commenters for their support for the focus on ''medically complex donors'' and ''medically complex organs.'' However, as explained previously in section III.B.4. of this final rule, we are not finalizing the definitions of ''medically complex donor'' or ''medically complex organ'' at this time. Hence, we will not be finalizing any of the QAPI requirements associated with those definitions in § 486.348(e). However, we encourage OPOs to utilize the existing QAPI framework to improve the procurement and placement of all organs from all donors.

Comment: Some commenters were concerned about unintended consequences due to the focus on medically complex donors and organs. They highlighted concerns that increased attention to medically complex cases could unintentionally discourage organ recovery if performance measures do not reflect clinical complexity, suggesting that OPOs could become risk averse. Other commenters were concerned that the emphasis on medically complex donors and medically complex organs could incentivize the use of organs that would result in poorer outcomes for patients.

Response: We acknowledge the commenters' concerns. However, as described previously in section III.B.4. of this final rule, we are not finalizing the definitions of ''medically complex donor'' or ''medically complex organ''. Hence, we will not be finalizing the corresponding QAPI requirements in section 486.348(e) that requires those definitions. However, we note research that we included in the proposed rule that demonstrates similar or better outcomes from these types of organs over traditional therapies (for example, dialysis) or no transplant.[23] [24] [25] Therefore, we will continue to evaluate research and practice patterns in this area and consider future changes that would enhance the utilization of all donated organs.

Comment: Some commenters were concerned that the emphasis for organ donation, including the proposed requirements for medical complex donors and medically complex organs could result in OPOs applying more pressure on potential donor families to obtain consent for donation.

Response: OPOs are required to encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of potential donor families as set forth in § 486.342 Requesting Consent. Hence, OPOs should not be applying pressure on potential donor families to obtain consent for donation. If individuals believe that undue pressure is being applied, they should report that information to the donor hospital administration and/or the State Survey

[22] See Appendix Y in the State Operations Manual. Accessed at *https://www.cms.gov/files/document/qso-26-06-opo-original-release-date-2026-03-11.pdf.* Accessed May 22, 2026.

[23] Walls, DO, Lee-Riddle, Gs, Manderski, MB, Sawinski, DL, and Abt, PL. Kidney transplant outcomes from donation after circulatory death donors of advanced age. Clinical Transplantation. 2020:34e13881. *http://doi.org/10.111/ctr.13881.* Accessed at *https://onlinelibrary.wiley.com/doi/pdf/10.1111%2Fctr.13881.* Accessed on September 23, 2025.

[24] Rijkse E, Ceuppens S, Qi H, IJzermans JNM, Hesselink DA, Minnee RC. Implementation of donation after circulatory death kidney transplantation can safely enlarge the donor pool: A systematic review and meta-analysis Int J Surg. 2021 August;92:106021. doi: 10.1016/j.ijsu.2021.106021. Epub 2021 Jul 10. Accessed at *https://pubmed.ncbi.nlm.nih.gov/34256169/.* Accessed on September 29, 2022.

[25] Tonelli M, Wiebe N, Knoll G, Bello A, Browne S, Jadhav D, Klarenbach S, and Gill J. Systematic Review: Kidney Transplantation Compared With Dialysis in Clinically Relevant Outcomes. *https://doi.org/10.1111/j.1600-6143.2011.03686.x.* Accessed at *https://onlinelibrary.wiley.com/doi/full/10.1111/j.1600-6143.2011.03686.x.* Accessed on September 29, 2022.

Agency [26] so the information can be reported to CMS.

Final Rule Action: After consideration of the public comments we received, we are not finalizing the QAPI requirements for medically complex donors and medically complex organs at § 486.348(e).

M. Proposed Conforming Changes to § 486.322 Relationships With Hospitals, Critical Access Hospitals, and Tissue Banks; § 486.324 Administration and Governing Body; and § 486.360 Emergency Preparedness

The previous OPO CfCs were developed based on the assumption that each OPO would only be responsible for a single DSA at any time. While section 1138(b)(2) of the Act requires that only one OPO may be designated to a DSA, it does not prohibit one OPO from being designated to multiple DSAs at one time. OPOs have expressed interest in a single OPO being designated to multiple DSAs. We proposed conforming changes to address provisions in the CfCs related to the number of DSAs an OPO may be responsible for. Specifically, we proposed to require OPOs to have written agreements with 95 percent of Medicare and Medicaid participating hospitals and CAHs with both a ventilator and an operating room in each of their designated DSA. We proposed replacing ''area'' with ''area(s)'' in several provisions. Additionally, we proposed that data used for OPO re-certification must include data for all deaths in all hospitals and CAHs across all DSA(s), unless a waiver has been granted. Finally, we proposed to revise the emergency preparedness requirements for OPOs. We proposed that OPOs are required to have an emergency communication plan with the names and contact information for transplant and donor hospitals in each of the OPO's DSA(s), and to replace ''DSA'' with ''DSA(s)''. We did not receive comments opposing these conforming changes.

Final Rule Action: After consideration of the public comments, we are finalizing the conforming changes to §§ 486.322, 486.324, and 486.360 as proposed.

IV. Comment Solicitation and Discussion on Emerging Issues

A. Conflicts of Interest

We solicited public comment on how OPOs address conflicts of interest, the adequacy of current regulatory requirements, and potential modifications to the OPO CfCs to assure consistent development and implementation of conflicts of interest policies that protect health and safety and the integrity of the organ donation system. The following is a summary of the comments we received and our responses.

Comments: Several commenters expressed support for strong, transparent conflict of interest (COI) policies for OPOs, emphasizing their importance in maintaining public trust in the organ donation and transplantation system. While some commenters stated that current CMS requirements were sufficient, many welcomed clearer Federal guidance to ensure consistency across all OPOs. Other commenters raised concerns regarding the creation of additional requirements, noting that OPOs already operate under established nonprofit governance standards, including IRS requirements and existing conflict-of-interest policies. These commenters stated that new requirements could be duplicative and impose unnecessary administrative burden and recommended that any new requirements be evidence-based and aligned with broader healthcare governance practices.

A few commenters disagreed with the suggestion that tissue recovery activities conflict with OPO and organ donation operations. They stated that organ donation and tissue donation are not competing activities and that many OPOs maintain separate organ and tissue service lines with distinct budgets, staffing structures, and operational processes, which function as internal safeguards against potential conflicts of interest.

Some commenters recommended that CMS require OPOs to have formal, written COI policies that mandate disclosure of secondary employment and require routine disclosure and documentation of conflicts and their resolutions. These commenters also encouraged CMS to collaborate with HRSA and the OPTN to avoid duplicative or overlapping regulatory requirements.

Response: We thank commenters for their feedback. We note that the comments we received may be taken into consideration for potential future rulemaking.

B. Allocation Out of Sequence (AOOS)

We provided an overview of Federal organ allocation requirements to address recent concerns related to an increase in organ AOOS, which reflects a deviation from allocation policy and may only occur if necessary to prevent organ wastage due to discard. We clarified expectations for regulatory and policy compliance necessary for maintaining public trust. The following is a summary of the comments we received and our responses.

Comment: Several commenters agreed that inappropriate organ allocation out of sequence practices undermines fairness, accountability, and public trust in the transplant system. However, several commenters emphasized that AOOS reflects broader systemic challenges within the organ allocation system rather than solely OPO conduct. These commenters stated that outdated allocation technology, prolonged sequential allocation processes, and variability in transplant center organ acceptance practices all contribute significantly to AOOS and organ non-use. A commenter stated that the current allocation system cannot dynamically adjust as donor information changes and does not include transplant center acceptance behavior into allocation decisions.

While commenters acknowledged that there may be reasons for non-sequential placement, including clinical urgency, logistical constraints, or organ viability concerns, commenters stated that insufficient documentation or explanation of such deviations creates the perception that allocation decisions may occur outside established policy. They recommended stronger oversight and auditing of AOOS decisions, clear documentation requirements for deviations from standard allocation order, and increased transparency regarding expedited placement practices to preserve public confidence in the transplant system.

Several commenters raised concerns that AOOS may unintentionally disadvantage certain patient populations, including pediatric candidates, minority communities, medically complex recipients, and underserved populations. A commenter stated that multi-organ allocation and AOOS practices may divert suitable organs away from pediatric candidates or delay pediatric access to transplantation. Other commenters expressed concern that existing allocation and performance frameworks do not adequately account for disparities affecting minority populations or patients requiring medically complex transplants. Commenters recommended that CMS monitor allocation practices for unintended equity impacts, evaluate pediatric utilization separately, consider health equity impacts in oversight activities, and ensure that medically

[26] *https://www.cms.gov/medicare/health-safety-standards/quality-safety-oversight-general-information/contact-information.*

complex organs are not disproportionately rejected or diverted in ways that worsen existing disparities in access to transplantation.

Some commenters stated that transplant center acceptance practices significantly contribute to AOOS and organ non-use. These commenters noted that transplant centers vary substantially in their willingness to accept medically complex organs and stated that current transplant program oversight and outcomes requirements create disincentives for transplant centers to accept higher-risk organs. They suggested that CMS work with transplant system interested parties to develop policies that (1) increase transparency regarding transplant center organ acceptance patterns, including accepting multiple offers for the same candidate and data on declines after acceptance; (2) encourage adoption of best practices for organ utilization; and (3) reduce unnecessary organ declines.

Several commenters emphasized the importance of coordination among CMS, HRSA, and the OPTN regarding AOOS and expedited placement policies. Commenters expressed concern that differing definitions and regulatory expectations related to medically complex organs, expedited placement, and AOOS may create confusion for OPOs and transplant centers. A few commenters suggested that CMS align its terminology and oversight expectations with OPTN policies related to expedited placement and allocation out of sequence practices.

Response: We thank commenters for sharing this information and recommendations. We believe the existing CMS regulatory requirements under §§ 486.324(b)(6) and 486.344 support an OPO's responsibilities for allocating organs in accordance with the rules and requirements of the OPTN. Section 486.324(b)(6) of the OPO CfCs enables the OPO advisory board to recommend policies for a system to allocate organs among transplant patients that is consistent with the rules and requirements of the OPTN. In addition, § 486.344 requires that each OPO have a system to allocate donated organs among transplant patients that is consistent with the rules and requirements of the OPTN, and that each OPO maintain written documentation from the OPTN showing the intended organ beneficiary's ranking in relation to other suitable candidates if the intended beneficiary has been identified prior to recovery of an organ for transplantation. Consistent with these requirements, HHS regulations governing the operation of the OPTN also require that organ offers are made to transplant patients—rather than to transplant centers—in a manner that is consistent with OPTN policies.[27] OPTN Policy 5.4.B requires OPOs to offer organs to potential recipients in the order that they appear in the match run, as determined by OPTN policy. OPOs that become aware of potential noncompliance with OPTN policy—including by themselves—are obligated to report such instances to the OPTN. To support OPO and transplant program compliance, the OPTN has developed an Allocation Out of Sequence resource page[28] that provides guidance on existing requirements and facilitates understanding of this issue.

As part of these ongoing efforts, the OPTN and HRSA have introduced new monitoring tools—including the AOOS Dashboard and OPO Allocation[29] Compliance Reports[30]—that provide HRSA, the OPTN, patients, and the public with a more comprehensive means of monitoring AOOS instances and trends. Also, in January 2026, the AOOS Workgroup[31] delivered three draft OPTN policy proposals to HRSA and the OPTN Board of Directors. These draft proposals address: (1) creating a definition of an ''offer''; (2) an expedited protocol for the allocation of hard-to-place kidneys; and (3) proposed approaches to improve OPTN member compliance with OPTN policy.

CMS and HRSA continue to closely collaborate to ensure appropriate oversight of existing policy and are carefully examining the issue of organs being allocated out of sequence with respect to both OPO and transplant center actions.

C. Automated Electronic Referrals

We solicited public comment on how to leverage technology to support automated electronic referrals and ensure appropriate privacy and security protections for the information.

The following is a summary of the comments we received and our responses.

Comment: Commenters were generally supportive of requiring automated electronic referrals from donor hospitals to OPOs. Commenters noted that an automated referral process would streamline hospital workflows, reduce reliance on manual phone-based referrals, lower the risk of missed or delayed referrals, and provide OPOs with more accurate and timely clinical information. A commenter noted, however, that automated referrals should supplement rather than replace direct communication between hospital staff and OPO personnel, as clinical discussions and coordination between providers and OPO staff remain essential throughout the donation process. A few commenters expressed concerns about privacy and data security protections for both potential and actual organ donors and recommended that OPOs be required to comply with the Health Insurance Portability and Accountability Act (HIPAA).

Several commenters also recommended leveraging platform-independent standards, such as Fast Healthcare Interoperability Resources (FHIR®), to integrate automated referral systems across diverse software environments. FHIR is a widely used health information technology standard that enables different healthcare systems and software platforms to securely share and exchange patient data in a consistent format. By adopting FHIR-based standards, automated referral systems can be integrated across a wide range of software environments, reducing dependence on any single vendor and supporting ongoing innovation. Commenters noted that most electronic health record (EHR) systems currently include functionality to initiate actions based on defined clinical triggers. However, these triggers must typically be configured individually by each hospital, as no universal standard currently exists. Commenters encouraged the standardization of these clinical triggers and their consistent implementation across all healthcare organizations, noting that establishing a national standard would significantly streamline the deployment and scalability of automated referral systems.

Commenters also raised concerns about the operational and financial challenges associated with implementation, particularly for rural and under-resourced hospitals with limited information technology (IT) infrastructure, fragmented EHR systems, staffing limitations, or insufficient technical resources. Commenters recommended that CMS establish cost-sharing or incentive frameworks such as pilot grants or partnerships with health IT vendors to help offset implementation and maintenance costs.

[27] 42 CFR 121.7(b)(1) and (2).

[28] Allocation out of OPTN Sequence. *https://www.hrsa.gov/optn/policies-bylaws/policy-issues/allocation-out-of-sequence-aoos#learn.*

[29] Allocation out of OPTN Sequence. *https://www.hrsa.gov/optn/policies-bylaws/policy-issues/allocation-out-of-sequence-aoos#learn.*

[30] OPO Allocation Compliance Reports. *https://www.hrsa.gov/sites/default/files/hrsa/optn/sample-allocation-compliance-report.pdf.*

[31] AOOS Workgroup. *https://www.hrsa.gov/optn/policies-bylaws/policy-issues/allocation-out-of-sequence-aoos/workgroup.*

Response: We thank commenters for their feedback. We note that the comments we received may be taken into consideration in potential future rulemaking.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to obtain approval from the Office of Management and Budget (OMB) before conducting or sponsoring a collection of information. A ''collection of information'' includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. This final rule contains information collection requirements associated with the information management requirements at § 486.330.

In the proposed rule, we provided a 60-day notice and solicited public comment on these information collection requirements, including the need for the information collection, the accuracy of our burden estimates, the quality, utility, and clarity of the information to be collected, and ways to minimize the information collection burden on affected entities. We considered the public comments received in developing this final rule. Commenters generally requested additional clarity regarding the meaning of ''bona fide'' research and ''qualified researcher'' under the information management requirements, and noted that much deceased donor research is bench research that may not require approval by an institutional review board. Commenters also raised concerns that expanded QAPI requirements could increase documentation burden, particularly with respect to medically complex donors and organs.

After consideration of public comments, we are finalizing the information management requirements at § 486.330 as proposed. In response to public comments raising concerns about the lack of a standardized and nationally recognized definition of medical complexity, we are not finalizing the proposed definitions of ''medically complex donor'' and ''medically complex organ'' at § 486.302, and we are not finalizing the QAPI requirement proposed at § 486.348(e). Accordingly, this final rule does not include the information collection burden associated with QAPI activities for medically complex donors and organs (IC–2) that was included in the proposed rule.

In analyzing the burden for these information collection requirements, we rely on wage and salary information. Unless otherwise indicated, we obtained salary information from the May 2025 National Occupational Employment and Wage Estimates, United States, from the Bureau of Labor Statistics (BLS). Based on this information, we calculated estimated adjusted hourly rates based on the national mean salary for each position increased by 100 percent to account for overhead costs and fringe benefits. The raw wage and salary data from BLS do not include health, retirement, and other fringe benefits, or the rent, utilities, information technology, administrative, and other overhead costs supporting each employee. HHS department-wide guidance on preparation of regulatory and paperwork burden estimates states that doubling salary costs is a good approximation for these overhead and fringe benefit costs.

Table 1 presents the BLS occupation code and title, the associated OPO staff position in this final rule, the estimated average hourly wage, and the adjusted hourly wage, with a 100 percent markup for fringe benefits and overhead. In addition, throughout this analysis, any amount ending with 0.50 or more is rounded up to the next nearest dollar amount, and any amount ending with 0.49 or less is rounded down to the next nearest dollar amount.

TABLE 1: 2025 Estimated Mean and Adjusted Hourly Wages

Occupation Code	BLS Occupation Title	Associated Position Title in this Final Rule	Mean Hourly Wage ($/hour)	Adjusted Hourly Wage (with 100% markup for fringe benefits & overhead) ($/hour) (rounded to nearest dollar)
29-1210	Physicians	Medical Director	$133.30	$267
29-1141	Registered Nurses (General Medical and Surgical Hospitals)	Organ Procurement Coordinator (OPC)	$48.76	$98
11-9111	Medical and Health Services Managers (General Medical and Surgical Hospitals)	Quality Manager; Administrator	$67.77	$136

A. ICRs Regarding Information Management (§ 486.330)

This final rule establishes new information management requirements for OPOs at § 486.330. These requirements establish documentation requirements specific to organs procured by OPOs and sent for research, including pancreata procured and sent for islet cell research. To meet this requirement, OPOs must maintain records regarding the disposition of organs sent for research studies, including information identifying approval by an institutional review board (IRB) or other formal authorizing body, as appropriate, the research institution, the principal investigator, and study contact information.

Estimating the number of organs procured by OPOs per research study is complex because estimates vary depending on the study's design, objectives, and resources, as well as the type of organ utilized. To estimate the burden for pancreata procured and sent for islet cell research, hereinafter referred to as IC–1(a), we use program data from the research institute City of

Hope. According to their research data, 15 OPOs participate in their research, with each OPO submitting on average 110 pancreata per year. We use this data to estimate that, on average there are a total of 1,650 pancreata submitted for islet cell research per year (110 pancreata × 15 OPOs).

Furthermore, according to CMS correspondence with a participating OPO, this OPO submitted a total of 783 pancreata to three different studies from 2021 through 2024, with an annual average of 196 pancreata submitted to 3 principal investigators. To comply with this requirement, this OPO would need to document 196 pancreata with the associated research study information. We assume an OPO's organ procurement coordinator, at an adjusted hourly wage of $98 per hour, will be responsible for this activity and will take 5 minutes, or 0.083 hours, to map each pancreas with its corresponding research study information.

The total annual burden for the 15 participating OPOs is estimated at 244 hours per year (0.083 hours × 196 responses × 15 OPOs). The total annual cost is $23,912 (244 hours × $98 per hour). This is approximately 16 hours per participating OPO (244 hours ÷ 15 participating OPOs), at a cost of $1,568 per participating OPO (16 hours × $98). When distributed across all 54 OPOs for purposes of presenting an average burden across the industry, the annualized burden for IC–1(a) is approximately 5 hours per OPO (244 hours ÷ 54 OPOs), at a cost of approximately $443 per OPO ($23,912 ÷ 54 OPOs).

Estimating the burden for other organs that are procured and used for research, such as kidneys, hearts, lungs, livers, intestines, and pancreata used for research other than islet cell research, hereinafter referred to as IC–1(b), is more difficult because we do not have reliable data on which to base these estimates. In the absence of data, we illustrate the upper bound of possible burden. We assume one organ is procured and used for one research study.

According to data maintained by the Organ Procurement and Transplantation Network (OPTN), as of June 4, 2025, there was an annual average of 5,631 organs submitted annually for research between 2022 and 2024. Additionally, recent research by the National Academies indicates that between 2013 and 2015, there was an annual average of 4,903 organs recovered and used for research programs. As we anticipate the number of pancreata used for islet cell research to return to historic levels, we assume the average number of all organs procured for research to be 5,267 per year, ((4,903 organs + 5,631 organs) ÷ 2).

Assuming an average of 5,267 organs per year, we anticipate that OPOs will submit a total of 5,267 responses per year. For IC–1(b), this results in annual burden of 437 hours (5,267 responses × 0.083). Distributed across 54 OPOs, this is approximately 8 hours per OPO (437 hours ÷ 54 OPOs). We assume the responses will be completed by an OPO's organ procurement coordinator, at an adjusted hourly wage of $98 per hour. This results in an annual burden cost of $42,826 (437 hours × $98), or approximately $793 per OPO ($42,826 ÷ 54 OPOs).

The annual burden for IC–1, including IC–1(a) and IC–1(b), is estimated at 681 burden hours (244 hours + 437 hours), at an estimated annual cost of $66,738 ($23,912 + $42,826). Distributed across all 54 OPOs, this is approximately 13 hours per OPO (681 hours ÷ 54 OPOs), at a cost of approximately $1,236 per OPO ($66,738 ÷ 54 OPOs).

The information collection request under OMB control number 0938–0688 will be revised and submitted to OMB for approval.

B. Collection of Information Summary

The annualized burden for all information collections finalized in this rule, including IC–1(a), IC–1(b) for all 54 OPOs would be approximately 681 burden hours at an estimated annual cost of $66,738. Distributed across all 54 OPOs, this equals approximately 13 hours per OPO per year, at a cost of approximately $1,236 per OPO per year.

TABLE 2: Annualized Burden Summary

Information Collection (IC)	Annual Burden Hours	Annual Cost	Hours per OPO	Cost per OPO
IC-1(a) - Pancreata for Islet Cell Research	244	$23,912	5	$443
IC-1(b) - Other Organs for Research	437	$42,826	8	$793
Total All ICs	**681**	**$66,738**	**13**	**$1,236**

Comment: Several commenters requested additional clarity regarding the meaning of ''bona fide'' research and ''qualified researcher'' under the information management requirements and noted that much deceased donor research is bench research that may not require approval by an institutional review board. Several commenters also expressed concern that expanded QAPI requirements, including requirements related to medically complex donors and organs, could increase documentation burden and divert resources from clinical operations.

Response: We considered these comments in developing this final rule. We are finalizing the information management requirements at § 486.330 as proposed. The final rule requires an OPO to maintain records showing the disposition of each organ recovered and sent for research, including, but not limited to, information documenting approval from an IRB or other formal authorizing body, as appropriate. We recognize that IRB approval may not be

required for certain types of research, including some bench research involving deceased donor organs. As set forth in § 486.330(b)(2)(i), an OPO is only required to maintain information documenting approval from an IRB or other formal authorizing body ''as appropriate.'' Where approval from an IRB or other formal authorizing body is not required, the OPO is not required to maintain documentation of such approval. In those circumstances, the OPO is still required to maintain records showing the disposition of the organ as reported as described in § 486.330(b)(2), including the research institution, principal investigator, and study contacts. In response to comments raising concerns about the lack of a standardized definition of medical complexity for medically complex donors and organs, we are not finalizing the proposed definitions of ''medically complex donor'' and ''medically complex organ,'' and we are not finalizing the related QAPI requirement proposed at § 486.348(e).

VII. Regulatory Impact Analysis

A. Statement of Need

More than 100,000 people are currently waiting for an organ transplant and demand for organs continues to exceed supply.[32] OPOs play a critical role in ensuring that as many organs as possible reach patients who need them. In 2019, President Trump issued Executive Order 13879 ''Advancing American Kidney Health,'' directing the Secretary to enhance the procurement and utilization of organs available through deceased donation and to establish more transparent, reliable, and enforceable metrics for evaluating an OPO's performance. In response, CMS published the December 2020 OPO final rule, which, among other changes, established new performance measures and a three-tier ranking system for OPOs. The December 2020 OPO final rule created a baseline implementation framework with annual costs of $126.7 million.

Since the December 2020 OPO final rule was published, CMS has received many questions from OPOs and other interested parties seeking clarification about how the new system works, particularly as the system approaches the end of the 2022–2026 re-certification cycle. This final rule clarifies procedures for competitions, designation to multiple DSAs, non-renewal and de-certification, appeals, outcome-measure accountability, information management, QAPI, and other operational details. The final rule also reflects changes made in response to public comments, including not finalizing the proposed definitions of ''medically complex donor'' and ''medically complex organ'' and the related QAPI requirement at § 486.348(e), modifying the designation framework for certain CMS-assigned DSAs, and not finalizing the proposed licensure requirement for personnel performing clinical duties.

We estimate that this final rule will cost approximately $16.4 million in the first year and $7.9 million annually thereafter. These costs are incremental to the broader framework established in the December 2020 OPO final rule and reflect targeted operational and administrative refinements rather than fundamental system restructuring. We also estimate that this final rule will result in approximately $583,000 in annual benefits due to reduced implementation inquiry and compliance-interpretation burden, as well as a one-time benefit of $500,000 due to increased operational flexibility for OPOs designated to multiple DSAs.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 ''Regulatory Planning and Review,'' Executive Order 13132 ''Federalism,'' Executive Order 13563 ''Improving Regulation and Regulatory Review,'' Executive Order 14192 ''Unleashing Prosperity Through Deregulation,'' the Regulatory Flexibility Act, section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 require agencies to assess all costs and benefits of regulatory alternatives and, when regulation is necessary, to select approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President's priorities.

The Office of Management and Budget has determined this rulemaking is significant under section 3(f) of Executive Order 12866 but not under section 3(f)(1).

This final rule builds on the December 2020 OPO final rule, which established new OPO performance measures and re-certification processes for the 2022 through 2026 certification period and future re-certification cycles. The December 2020 OPO final rule created baseline implementation costs of $126.7 million annually, comprising: (1) CMS administrative costs of $1.0 million annually for oversight, technical assistance, appeals processing, and additional FTE to support system implementation; (2) OPO management transition costs of $2.9 million annually for incumbent OPOs transitioning to new performance standards and administrative and operational adjustments; and (3) OPO operational costs of $122.8 million annually associated with procurement of additional organs and enhanced performance activities under new outcome measures.

As outlined in Table 3, this final rule would cost an estimated $16.4 million in Year 1 and $7.9 million in recurring annual costs. Year 1 costs include approximately $15.11 million for OPOs and $1.37 million for CMS. Recurring annual costs include approximately $7.56 million for OPOs and $340,000 for CMS. These incremental costs reflect clarifications and refinements to operational and administrative requirements from the December 2020 OPO final rule rather than fundamental system restructuring. The final rule costs differ from the proposed rule estimates primarily because CMS is not finalizing the proposed licensure requirement for personnel performing clinical duties, is using updated tier-assignment data showing 35 DSAs expected to open for competition,[33] and is updating the estimated number of OPOs that may expand to serve multiple DSAs from 10 to 14. In the following sections, we discuss each of the expected impacts in detail.

[32] Organ Donation Statistics. *https://www.organdonor.gov/learn/organ-donation-statistics.* Accessed on April 29, 2025.

[33] CMS, Release of the 2026 Organ Procurement Organization (OPO) Annual *Performance Preview and Final Reports, and Publication of the 2026 Annual Public Aggregate Performance Report.*

TABLE 3: Final Incremental Costs (in millions)

Cost Component	Final Rule Year 1	Final Rule Recurring Annual
CMS Administrative	$1.37	$0.34
OPO Costs	$15.11	$7.56
Total	**$16.48**	**$7.90**

1. Anticipated Incremental Effects (Costs and Benefits)

a. Overview

This section provides a detailed analysis of the incremental costs and benefits associated with the provisions finalized in this rule. As established in section B and detailed in Table 4, the total estimated costs are approximately $16.4 million in Year 1 and $7.9 million in recurring annual costs beyond Year 1.

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TABLE 4: Summary of Incremental Annual Costs by Provision Category

Provision Number	Provision	OPO Costs ($k)	CMS Costs ($k)	Total ($k)	Cost Type
1	Definition Changes (§ 486.302)	91	0	91	One-Time
2	Requirements for Certification (§ 486.303)	0	0	0	No Costs
3	Designation of one OPO for each DSA (§ 486.308)	0	58	58	Recurring Annual
4	OPO designation to more than one service area (§ 486.309)	633	0	633	One-Time
4	OPO designation to more than one service area (§ 486.309)	7,000	44	7,044	Recurring Annual
5	Non-renewal/De-certification (§§ 486.311, 486.312)	7	13	20	One-Time
6	Appeals (§ 486.314)	25	52	77	One-Time
6	Appeals (§ 486.314)	30	73	103	Recurring Annual
7	Re-certification and Competition (§ 486.316)	6,514	864	7,378	One-Time
8	Outcome Measures (§ 486.318)	281	52	333	One-Time
8	Outcome Measures (§ 486.318)	402	174	576	Recurring Annual
9	Human Resources (§ 486.326)	0	0	0	No Quantified Costs
10	Information Management (§ 486.330)	67	0	67	Recurring Annual - COI
11	QAPI (§ 486.348)	0	0	0	One-Time
11	QAPI (§ 486.348)	0	0	0	Recurring Annual - COI
12	Conforming Changes (§§ 486.322, 486.324, 486.328, 486.360)	0	26	26	One-Time
12	Conforming Changes (§§ 486.322, 486.324, 486.328, 486.360)	65	0	65	Recurring Annual
	TOTAL ONE-TIME COSTS	**7,551**	**1,007**	**8,558**	
	TOTAL RECURRING ANNUAL COSTS	**7,564**	**349**	**7,913**	
	YEAR 1 TOTAL	**15,115**	**1,356**	**16,471**	
Totals may not sum precisely due to rounding.					

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b. Data Sources and Key Assumptions

Our analysis relies on data from several sources and includes key assumptions about OPO operations and regulatory implementation. Labor costs are based on Bureau of Labor Statistics (BLS) May 2025 National Occupational Employment and Wage Estimates, adjusted by a factor of 2.0 or 100 percent, for fringe benefits and overhead. Baseline costs are established by the December 2020 OPO final rule, which documented annual costs of $126.7 million. The weighted average hourly rate of $186 for OPO staff reflects a mix of executive directors, medical directors, quality managers, and administrative personnel.[34] The CMS GS–14 hourly rate of $145 reflects staff conducting oversight, policy development, and technical assistance activities, based on the 2025 General Schedule (GS) salary table for the Washington-Baltimore-Arlington locality pay area.

Recurring annual cost estimates in this RIA reflect the average annual cost of activities that recur each re-certification cycle, rather than a constant level of effort in every calendar year. For provisions tied to cycle-end events—including designation management, competition administration, and successor transitions under §§ 486.308 and 486.309—CMS expects activity to be concentrated in the year the re-certification cycle concludes and the following transition year, with comparatively limited activity in intervening years. The annualized figures presented reflect the total expected cost across the cycle, divided evenly for presentation purposes.

For this final rule, we use an assumption of 54 OPOs serving 55 DSAs. We also use updated performance data showing 14 tier 3 DSAs and 21 tier 2 DSAs, resulting in an estimated 35 DSAs opened for competition during the re-certification cycle. We estimate that approximately 35 to 40 OPOs would participate in competitions, with an average of 3 to 5 OPOs competing for each open DSA. Because an OPO may apply for more than one open DSA, the estimated number of applications exceeds the estimated number of participating OPOs. This results in approximately 140 total competition applications across the cycle, calculated as 35 DSAs × 4 OPOs per DSA.

We also estimate that no more than 14 OPOs will expand to serve multiple DSAs following implementation of the December 2020 OPO final rule's performance standards and the designation framework finalized in this rule. The estimate that no more than 14 OPOs will expand to serve multiple DSAs reflects the number of OPOs expected to assume responsibility for at least one additional DSA, not the total number of DSAs that may be opened for competition. This estimate assumes a one-to-one relationship between expanding OPOs and newly opened DSAs. For example, the illustrative benefit estimate discussed under § 486.316 assumes that 14 tier 3 DSAs will be awarded across 14 successor OPOs. We acknowledge, however, that there could be cases where an OPO wins the competition for more than one additional DSA.

In response to public comments, CMS is not finalizing the proposed licensure requirement for personnel performing clinical duties. Therefore, the final RIA removes the proposed OPO and CMS costs associated with licensure verification, tracking, recruitment, training, and related monitoring. CMS is finalizing only the medical director conforming change at § 486.326(d), which is not expected to impose meaningful incremental costs.

c. Incremental Costs

This section presents incremental costs by regulatory provision, distinguishing between one-time implementation costs (Year 1) and recurring annual costs. Estimates are provided separately for OPOs and CMS.

(1) Definition Changes (§ 486.302)

The definition changes finalized at § 486.302 are expected to result in limited one-time implementation costs for OPOs. These costs are associated with reviewing the revised regulatory definitions, updating internal policies or guidance materials as needed, and conducting staff training or familiarization.

We estimate that each OPO will spend approximately 13 hours on these one-time implementation activities at a weighted average hourly rate of $129. This results in an estimated cost of $1,677 per OPO, calculated as 13 hours × $129.[35] Across 54 OPOs, the total estimated one-time cost is $90,558, rounded at $91,000 calculated as 54 OPOs × $1,677. We do not anticipate any costs for CMS. We did not receive public comments that provided alternative data, assumptions, or quantitative estimates specific to the RIA cost estimate for the definition changes. Therefore, we are finalizing the one-time cost estimate for this provision without revision.

(2) Requirements for Certification (§ 486.303)

The removal of § 486.303(e) does not impose new implementation activities on existing OPOs or CMS in this final rule. This provision removes obsolete regulatory text but does not establish a new OPO certification process or require existing OPOs to undertake new operational, administrative, or reporting activities.

Therefore, we estimate no incremental costs to OPOs or CMS for this provision. Any costs associated with a future process for certifying new OPOs would be addressed in future rulemaking, if CMS proposes such a process.

We did not receive public comments that provided alternative data, assumptions, or quantitative estimates specific to the RIA cost estimate for this provision.

(3) Designation of One OPO for Each Donation Service Area (§ 486.308)

The finalized changes at § 486.308 primarily affect CMS administrative processes and do not impose direct incremental costs on OPOs. To the extent an OPO incurs operational costs from serving more than one DSA, those costs are addressed under § 486.309.

We estimate that the finalized changes at § 486.308 will require approximately 400 hours of CMS GS–14 staff time annually for designation-related administrative activities. At an estimated loaded hourly rate of $145, this results in a recurring annual CMS cost of $58,000, calculated as 400 hours

[34] The $186 weighted average hourly wage reflects a blended rate for OPO staff expected to perform implementation and compliance activities, using the same effective weighting underlying the $177 hourly wage used in the proposed rule. The updated rate reflects approximately 38.4 percent Medical Director and 61.6 percent Executive Director/Quality Manager/Administrator, using the BLS-based loaded wage rates summarized in Table 1: (1) Medical Director at $267 per hour; and (2) Executive Director/Quality Manager/Administrator at $136 per hour. The weighted average hourly wage is calculated as [($267 × 38.4 percent) + ($136 × 61.6 percent)] ≈ $186 per hour.

[35] The $129 weighted average hourly wage reflects a blended rate for OPO staff expected to review and implement the definition changes, using BLS-based loaded wage rates summarized in Table 1: (1) Medical Director at $267 per hour; (2) Organ Procurement Coordinator at $98 per hour; and (3) Quality Manager/Administrator at $136 per hour, weighted as [($267 × 2.5) + ($98 × 12.5) + ($136 × 5)] ÷ 20 hours = $129 per hour. The original 20-hour estimate reflected review and implementation activities across six defined terms revised or added at § 486.302. Because this final rule does not finalize the proposed definitions of ''medically complex donor'' and ''medically complex organ,'' the hours estimate is reduced proportionally to reflect the four remaining defined terms (adverse event, donor, organ, and unsound medical practices), calculated as 4/6 × 20 hours ≈ 13.3 hours, rounded to 13 hours.

× $145. These activities include tracking competition triggers, managing designation period adjustments, coordinating successor selection when competition is not feasible, monitoring CMS-assigned DSAs, and determining when competition is or is not required under § 486.308.

We did not receive public comments that provided alternative data, assumptions, or quantitative estimates specific to the RIA cost estimate for this provision. Therefore, we are finalizing the recurring annual CMS cost estimate for this provision without revision.

(4) OPO Designation to More Than One Service Area (§ 486.309)

The cost-driving activities associated with § 486.309 are the operational activities required when an OPO expands to serve more than one DSA. These activities may include additional coordination, travel and logistics, information technology support, administrative staffing, hospital relationship-building, quality oversight, satellite office operations, legal and compliance activities, community outreach, and operational contingency planning.

We estimate that no more than 14 OPOs will expand to serve multiple DSAs following implementation of the designation framework finalized in this rule. We estimate that each OPO serving multiple DSAs will incur approximately $500,000 in additional recurring annual costs, resulting in an estimated recurring annual OPO cost of $7.0 million, calculated as 14 OPOs × $500,000.

We also estimate one-time Year 1 OPO costs of $632,800 for IT system upgrades and training expenses specific to multi-DSA operations. We do not include general DSA transition costs because those costs would occur whenever a DSA changes OPOs, regardless of § 486.309. The December 2020 baseline accounted for related governance and top-management costs, although it did not fully quantify every transition expense. Total Year 1 OPO costs for this provision are therefore estimated at $7,632,800, consisting of $7.0 million in recurring annual costs plus $632,800 in one-time costs.

CMS will also incur recurring administrative costs associated with oversight of multi-DSA designations, tracking performance accountability across DSAs, and related re-certification and designation activities. This cost does not reflect a change in the total number of DSAs CMS monitors; rather, it reflects the added administrative complexity of overseeing designation status when an OPO holds multiple DSAs—including tracking mixed-tier performance across an OPO's DSAs and processing removal of designation to a single tier 3 DSA without triggering de-certification of the OPO under § 486.309(c).

We estimate that CMS will require approximately 300 hours of GS–14 staff time annually for these activities. At an estimated loaded hourly rate of $145, this results in a recurring annual CMS cost of $43,500, rounded to $44,000, calculated as 300 hours × $145.

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TABLE 5A: Recurring Cost Components for Multi-DSA Operations*

Component	Annual Cost	Calculation Basis
Coordination meetings	$1,092,000	52 weekly meetings × 6 staff × 2 hour × $125/hour × 14 OPOs
Travel and logistics	$1,344,000	travel: 4 staff × 20 trips × $1,200/trip × 14 OPOs
IT infrastructure	$210,000	Annual licensing/maintenance: $15,000/OPO × 14 OPOs
Additional administrative staff	$728,000	20 hours/week × 52 weeks × $50/hour × 14 OPOs
Hospital relationship building	$744,240	Executive Director (100 hrs × $132) + Medical Director (80 hrs × $262) + Coordinators (200 hrs × $95) × 14 OPOs
Enhanced quality oversight	$515,200	Quality Manager (150 hrs × $132) + Data Analyst (200 hrs × $85) × 14 OPOs
Satellite office operations	$700,000	$50,000/OPO × 14 OPOs for facility rental and operations
Legal and compliance	$420,000	$30,000/OPO × 14 OPOs
Marketing and community outreach	$560,000	$40,000/OPO × 14 OPOs
Operational contingency	$686,560	Buffer for unexpected costs
Total Annual Recurring	**$7,000,000**	-

*Travel cost estimates based on GSA FY 2025 Per Diem Rates (*https://www.gsa.gov/travel/plan-book/per-diem-rates)* and Bureau of Transportation Statistics average domestic airfare. IT costs based on market research of healthcare data management systems. All staff costs use BLS wage data *(https://www.bls.gov/oes/)* with 100% loading factor consistent with December 2020 OPO final rule methodology (85 FR 77898). CMS costs based on U.S. Office of Personnel Management, 2025 General Schedule (GS) Salary Tables (*https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/*).

TABLE 5B: One-Time Cost Components for Multi-DSA Operations

One-time Year 1 component	Cost	Calculation Basis
IT system upgrades	$420,000	$30,000 per OPO × 14 OPOs
Training expenses	$212,800	$15,200 per OPO × 14 OPOs
Total One-Time Costs	**$632,800**	**$420,000 + $212,800**
Total Year 1 Multi-DSA Cost	**$7,632,800**	**$7,000,000 recurring + $632,800 one-time**
Note: General costs of transferring a DSA from one OPO to another are not included because they are not new costs caused by § 486.309. Table 5B includes only one-time costs specific to multi-DSA operations.		

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We did not receive public comments that provided alternative data, assumptions, or quantitative estimates specific to the RIA cost estimate for this provision. Therefore, we are finalizing the cost estimates for this provision without revision.

(5) Non-Renewal of Agreement (§ 486.311) and De-Certification (§ 486.312)

The finalized changes at §§ 486.311 and 486.312 are expected to result in limited one-time implementation costs for potentially affected OPOs and CMS. For OPOs, the estimate reflects limited senior-level familiarization with the revised non-renewal and de-certification provisions by the OPO administrator, legal counsel, and senior leadership. We do not assume broad front-line staff training or systemwide operational changes for all OPOs.

For purposes of this estimate, we assume that up to 14 OPOs may conduct this familiarization, using the 14 Tier 3 DSAs as a conservative proxy for potentially affected OPOs. We estimate that each potentially affected OPO will spend approximately 2.5 hours on these one-time familiarization activities at a weighted average hourly rate of $186. This results in an estimated cost of $465 per potentially affected OPO, calculated as 2.5 hours × $186. Across 14 potentially affected OPOs, the total estimated one-time OPO cost is $6,510, rounded to $7,000.

We estimate that CMS will spend approximately 91 hours on one-time implementation activities, including updating notice processes, internal procedures, systems, and staff guidance. At an estimated loaded hourly rate of $145, this results in a one-time CMS cost of $13,195, rounded to $13,000, calculated as 91 hours × $145.

We did not receive public comments that provided alternative data, assumptions, or quantitative estimates specific to the RIA cost estimate for this provision. Therefore, we are finalizing the CMS cost estimate without revision and revising the OPO cost estimate to reflect limited familiarization by potentially affected OPOs.

(6) Appeals (§ 486.314)

The finalized changes at § 486.314 are expected to result in one-time and recurring costs for OPOs and CMS. OPO costs are associated with legal and compliance review, updating internal appeal procedures, and familiarizing appropriate leadership and legal staff with the revised appeal timelines and processes. CMS costs are associated with updating appeal procedures, supporting the CMS Administrator review process, processing appeals when they arise, and providing related technical assistance.

We estimate one-time Year 1 OPO costs of $25,000 for initial legal review and policy updates. We also estimate recurring annual OPO costs of $30,132, rounded to $30,000, calculated as 3 hours × $186 per hour × 54 OPOs. These recurring costs reflect limited annual familiarization and compliance monitoring and do not assume broad front-line staff training.

For CMS, we estimate one-time Year 1 implementation costs of $52,200, rounded to $52,000, calculated as 360 hours × $145 per hour. These one-time costs include policy documentation and guidance development, system updates to track appeal types and review stages, staff training on revised timelines and procedural requirements, and development of review protocols and templates.

CMS will also incur recurring administrative costs to maintain and operate the revised appeals process. We estimate 500 hours annually at the GS–14 hourly rate of $145, for recurring annual CMS costs of $72,500, rounded to $73,000, calculated as 500 hours × $145 per hour. These recurring costs include Administrator review processing, hearing officer support, remand processing if needed, processing appeals related to removal of designation to a Tier 3 DSA without de-certification, and technical assistance related to the revised appeals procedures. This estimate reflects administrative workload and readiness to process appeals when they arise during a re-certification cycle; it is not an estimate that CMS expects a specific number of OPO de-certifications or removals of designation each year.

Total Year 1 costs for this provision are estimated at $180,000, consisting of $55,000 in OPO costs and $125,000 in CMS costs. Recurring annual costs after Year 1 are estimated at $103,000, consisting of $30,000 in OPO costs and $73,000 in CMS costs.

We did not receive public comments that provided alternative data, assumptions, or quantitative estimates specific to the RIA cost estimate for this provision. Therefore, we are finalizing the cost estimates for this provision without revision.

(7) Re-Certification and Competition (§ 486.316)

The finalized changes at § 486.316 are expected to result in one-time costs for OPOs and CMS associated with competition applications, CMS competition administration, transition-related review, and implementation of the revised re-certification and competition framework.

Based on current performance data, we estimate that 35 DSAs will be opened for competition during the re-certification cycle, calculated as 14 Tier 3 DSAs + 21 Tier 2 DSAs. The 21 Tier 2 DSAs are open for competition but do not involve de-certification. This estimate is used to calculate competition-related workload and is not an estimate that 35 OPOs will be de-certified or that all 35 open DSAs will transition to a different OPO.

We estimate an average of 4 OPO applications per open DSA, resulting in approximately 140 total competition applications, calculated as 35 open DSAs × 4 applications per DSA. We estimate that each competition application will require approximately 200 hours of OPO staff time at a weighted average hourly rate of $186. This results in an estimated cost of $37,200 per application, calculated as 200 hours × $186. Across 140 applications, the total estimated OPO competition-application cost is $5,208,000, calculated as 140 applications × $37,200.

The 200-hour estimate includes time for performance data compilation and analysis, barrier identification and documentation, application development, legal review and compliance verification, and executive review and submission.

We also estimate additional one-time OPO costs of $1,306,000 for legal review, competition strategy development, and staff training on the revised re-certification and competition framework, calculated as 54 OPOs × 130 hours × $186 per hour, rounded to $1,306,000.

Total one-time OPO costs for this provision are estimated at $6,514,000, consisting of $5,208,000 for competition applications plus $1,306,000 for legal review, strategy development, and training.

For CMS, we estimate one-time implementation costs of $52,200, rounded to $52,000, calculated as 360 hours × $145 per hour. We also estimate additional one-time CMS competition-administration costs of $812,000, calculated as 5,600 hours × $145 per hour. Of the 5,600 hours, we estimate that competition process administration and application review will require approximately 3,500 aggregate CMS staff hours, calculated as 140 applications × 25 aggregate CMS staff hours per application. The 25-hour estimate reflects combined CMS staff time across multiple reviewers and related coordination, documentation, and

application-processing activities; it is not a per-reviewer estimate. The remaining hours include transition oversight and verification and technical assistance related to the competition process. Total one-time CMS costs for this provision are estimated at $864,000.

This estimate does not reflect DSAs that may be assigned directly to an OPO under the insufficient-time exception at § 486.308(a)(4), which permits CMS to designate a successor OPO for the remainder of the designation period without a subsequent competition. Because this exception is expected to be used rarely, and because only one OPO currently serves more than one DSA, we have not separately quantified any resulting reduction in competition-application or CMS-administration costs.

We did not receive public comments that provided alternative data, assumptions, or quantitative estimates specific to the RIA cost estimate for this provision. Therefore, we are finalizing the cost estimates for this provision without revision.

(8) Outcome Measures (§ 486.318)

The finalized changes at § 486.318 are expected to result in one-time and recurring costs for OPOs and CMS associated with implementation and administration of the outcome-measure accountability framework for OPOs that acquire or are assigned additional DSAs, including OPOs designated to multiple DSAs.

In the proposed rule, we estimated that each OPO would spend approximately 40 hours annually on activities associated with the outcome-measure accountability framework. We are retaining this proposed recurring estimate in the final rule, adjusted from 55 OPOs to 54 OPOs. The recurring estimate reflects ongoing compliance monitoring and maintenance of DSA-level outcome-measure accountability information, where applicable. It does not include recurring staff training, annual re-familiarization with accountability timelines, or routine QAPI revisions.

The total recurring cost to OPOs is $401,760 calculated as 54 OPOs × 40 hours × $186 per hour, rounded to $402,000. Additionally, we estimate one-time Year 1 OPO costs of $281,000 for legal and policy review of the outcome-measure accountability provisions and one-time updates to internal tracking frameworks or systems used to monitor DSA-level performance, where applicable. This estimate is calculated as 54 OPOs × 28 hours × $186 per hour, rounded to $281,000.

For CMS, we estimate 360 hours at the GS–14 hourly rate of $145 for Year 1 implementation costs totaling $52,200, rounded to $52,000. These one-time costs include policy documentation and guidance development, system updates to track separate DSA performance and different accountability timelines for newly acquired or assigned DSAs, internal staff familiarization, and development of templates for tracking the applicable accountability timelines under § 486.318(c)(3) and (4).

CMS will also incur ongoing administrative costs associated with monitoring outcome-measure performance separately for each DSA when an OPO is designated to multiple DSAs, tracking the applicable accountability timeline for newly acquired or assigned DSAs under § 486.318(c)(3) and (4), and supporting implementation of those timelines, including when 12 months of outcome-measure data are available and, for DSAs acquired through competition or CMS assignment, when the final assessment period of the following agreement cycle applies for re-certification purposes.

We estimate 1,200 hours annually at the GS–14 hourly rate of $145, totaling $174,000.

We did not receive public comments that provided alternative data, assumptions, or quantitative estimates specific to the RIA cost estimate for this provision. Therefore, we are finalizing the cost estimates for this provision without revision, except to adjust the OPO count from 55 OPOs in the proposed rule to 54 OPOs in this final rule.

(9) Human Resources (§ 486.326)

The only finalized change at § 486.326 is the medical director conforming change for multi-DSA operations. OPOs are already required to have a medical director, and the finalized conforming change does not impose new quantified implementation costs on OPOs or CMS.

CMS is not finalizing the proposed licensure, certification, or registration requirement for personnel performing clinical duties. Therefore, no costs associated with that proposed requirement are included in the final RIA.

We did not receive public comments that provided alternative data, assumptions, or quantitative estimates specific to the RIA cost estimate for the finalized medical director conforming change. Therefore, we estimate no incremental costs to OPOs or CMS for this provision.

(10) Information Management (§ 486.330)

The finalized changes at § 486.330 include information collection requirements associated with maintaining records for organs procured and sent for research. The burden for this provision is addressed in the Collection of Information section of this final rule and is included in the RIA as a recurring annual information collection cost.

As discussed in the Collection of Information section, we estimate the annual burden for this provision at 681 hours across all OPOs, with an estimated annual cost of $66,738, rounded to $67,000. This estimate includes 244 hours and $23,912 for pancreata procured and sent for islet cell research, and 437 hours and $42,826 for other organs procured and sent for research.

We do not estimate additional non-information-collection costs for OPOs or CMS for this provision.

We did not receive public comments that provided alternative data, assumptions, or quantitative estimates specific to the RIA cost estimate for this provision. Therefore, we are finalizing the cost estimate for this provision without revision.

(11) Quality Assessment and Performance Improvement (QAPI) (§ 486.348)

In response to public comments raising concerns about the lack of a standardized, nationally recognized standards of medical complexity, CMS is not finalizing the proposed definitions of ''medically complex donor'' and ''medically complex organ'' at § 486.302, or the QAPI requirement proposed at § 486.348(e). Therefore, no costs associated with this proposed requirement are included in the final RIA.

(12) Conforming Changes to § 486.322 Relationships With Hospitals, Critical Access Hospitals, and Tissue Banks; § 486.324 Administration and Governing Body; § 486.328 Reporting of Data; and § 486.360 Emergency Preparedness

This final rule makes conforming changes to the requirements for relationships with hospitals, critical access hospitals, and tissue banks; administration and governing body; reporting of data; and emergency preparedness to accommodate circumstances in which an OPO may be designated to serve more than one DSA.

The final rule introduces several conforming changes compared to the

2020 baseline. First, it changes the hospital agreement requirement at § 486.322(a) from requiring agreements with hospitals in the OPO's service area to requiring agreements in each of the OPO's designated service areas, thereby creating separate 95 percent compliance requirements for each DSA. Second, it updates references in § 486.324 governing administration and governing body from ''area'' to ''areas'' to ensure advisory board representation, policy recommendations, and coordination activities encompass all DSAs to which an OPO is designated. Third, it revises § 486.328(c) to specify that data used for OPO re-certification must include all deaths in all hospitals and critical access hospitals in the OPO's service areas, unless a waiver has been granted. Fourth, it revises emergency preparedness requirements at § 486.360 to require emergency communication plans that include contact information for transplant and donor hospitals in each DSA to which an OPO is designated and continuity of operations agreements that specify coverage for multiple DSAs.

We estimate that each OPO serving multiple DSAs will spend approximately 25 hours annually at a weighted average hourly rate of $186 to implement these conforming changes. Hospital agreement compliance verification will require 10 hours per OPO to verify that 95 percent compliance is maintained in each DSA, coordinate with hospitals across multiple service areas, track agreement status separately by DSA, and prepare documentation for CMS survey verification. Advisory board and governance updates will require 6 hours per OPO to ensure advisory board membership represents all service areas, update board policies and procedures to reference multiple DSAs, coordinate board activities across service areas, and document governance structures for multi-DSA operations. Emergency preparedness plan updates will require 5 hours per OPO to update emergency communication plans to include hospitals in all DSAs, revise continuity of operations agreements to specify multi-DSA coverage, coordinate emergency preparedness activities across service areas, and conduct training on updated emergency procedures. Data collection and reporting modifications will require 4 hours per OPO to update systems to track data separately by DSA, ensure re-certification data include all hospitals in all service areas, coordinate data collection across multiple DSAs, and prepare reports that distinguish performance by DSA.

Consistent with the updated assumption used in this final rule that no more than 14 OPOs will expand to serve multiple DSAs, the total recurring OPO cost for these conforming changes is $65,100, calculated as 14 OPOs × 25 hours × $186 per hour, rounded to $65,000.

For CMS, we estimate 180 hours at the GS–14 hourly rate of $145 for Year 1 implementation costs totaling $26,100, rounded to $26,000. These one-time costs include policy documentation and guidance development on multi-DSA hospital agreement compliance, survey protocol updates to verify separate 95 percent compliance in each DSA and review multi-DSA governance structures; review of data collection across service areas; and development of technical assistance materials for OPOs on multi-DSA operational requirements. We are not revising the CMS estimate based solely on the updated assumption that no more than 14 OPOs may expand to serve multiple DSAs because the CMS implementation activities are primarily guidance, survey-protocol, and technical-assistance activities that do not scale directly with the number of multi-DSA OPOs.

d. Incremental Benefits

This section presents the incremental benefits of this final rule organized by benefit category. For each category, we distinguish between quantified benefits that can be monetized with reasonable certainty and qualitative benefits that are real but difficult to quantify precisely. Benefit estimates are presented over the 5-year analysis period, 2027 through 2031, and are compared to the baseline established by the December 2020 final rule.

For quantified benefits, we provide a detailed calculation methodology showing data sources and assumptions, annual benefit estimates, and acknowledgment of uncertainty where appropriate. For qualitative benefits, we describe each benefit, explain why monetization is not feasible, and connect the benefit to the overarching regulatory objectives of improving organ procurement and transplantation outcomes.

The quantified benefits total approximately $598,000 in annual recurring benefits from reduced implementation inquiry and compliance-interpretation burden and $500,000 in one-time benefits due to increased operational flexibility for multi-DSA operations. These quantified benefits represent only a portion of the total value generated by this final rule. Significant qualitative benefits also exist that, while difficult to monetize, are important to the effective implementation of the December 2020 final rule's performance measurement, re-certification, designation, competition, and appeals framework and directly support the goal of increasing organ availability for the 100,000 plus individuals on transplant waiting lists.

TABLE 6: Summary of Quantified Incremental Benefits

Benefits Category	Benefits ($k) OPOs	Benefits ($k) CMS	Total Benefits ($k)	Benefits Type
Reduced Implementation Inquiry and Compliance-Interpretation Burden	285	313	598	Recurring Annual
Operational Flexibility for Multi-DSA Operations	500	0	500	One-Time

(1) Quantified Benefits

This section presents the quantified incremental benefits of this final rule organized by benefit category. For each benefit, we provide baseline context identifying what was already captured in the December 2020 final rule versus what is genuinely incremental in this final rule, detailed calculation methodology showing data sources and assumptions, annual and 5-year benefit estimates, and acknowledgment of uncertainty where appropriate. The quantified benefits focus on measurable impacts that can be monetized with reasonable certainty based on available data and conservative assumptions.

(a) Reduced Implementation Inquiry and Compliance Interpretation Burden

The December 2020 final rule (85 FR 77898) established new performance measures and a three-tier system. As CMS, OPOs, and other interested parties have prepared to operationalize that framework, particularly as the end of the re-certification cycle approached, CMS has received inquiries regarding implementation of re-certification, designation, competition, appeals, and related operational processes. The benefit estimate below captures expected reductions in future time spent by CMS and OPOs on repetitive implementation inquiries and compliance-interpretation activities as a result of the clarifications finalized in this rule.

This final rule is expected to reduce repetitive implementation inquiries by clarifying procedures for competitions, multi-DSA operations, non-renewal versus de-certification distinctions, appeals processes, outcome-measure accountability, information management, and QAPI adverse event and outcome-measure requirements.

We expect the clarifications finalized in this rule to reduce CMS staff time spent responding to repetitive inquiries, OPO staff time spent reviewing and seeking guidance on implementation issues, and disputes during the re-certification and competition process.

We estimate that absent this final rule, each OPO would spend approximately 60 hours annually seeking clarification. With the clarifications finalized in this rule, we estimate this would decline to 20 hours annually, saving 40 hours per OPO. This time involves executive directors, legal staff, and compliance officers researching requirements, preparing requests, coordinating with CMS, and implementing guidance. At a weighted average hourly rate of $132, adjusted by 100 percent for fringe benefits and overhead consistent with the 2020 methodology, this yields an annual OPO benefit of $285,120, calculated as 40 hours × $132 × 54 OPOs, rounded to $285,000.

Similarly, absent this rule, CMS would receive approximately 162 substantive requests annually, calculated as 3 requests per OPO × 54 OPOs. With the clarifications finalized in this rule, we expect a reduction to 54 requests annually, calculated as 1 request per OPO × 54 OPOs, eliminating 108 requests. Each request requires approximately 20 hours of GS–14 staff time for research, coordination, drafting responses, and quality review. At a GS–14 hourly rate of $145 (OPM 2025 pay tables, adjusted for locality and benefits), this yields an annual benefit of $313,200, calculated as 108 requests × 20 hours × $145, rounded to $313,000. The total annual benefit from reduced implementation inquiry and compliance-interpretation burden is therefore approximately $598,000, calculated as $285,000 in OPO benefits + $313,000 in CMS benefits. Over the 5-year analysis period, the undiscounted benefit is approximately $2.99 million, using the unrounded annual estimate.[36]

This estimate is conservative because it captures only direct time savings. It excludes indirect costs of associated with case-specific implementation questions, including delayed strategic planning, deferred operational decisions, potential disputes and appeals, and opportunity costs when staff time is diverted from core organ procurement activities. The actual benefit may be higher. The estimate assumes a 67 percent inquiry reduction; greater reductions would increase benefits proportionally. Conversely, OPOs and CMS staff may need familiarization time with the final clarifications, potentially causing short-term inquiry increases before long-term benefits are realized.

(b) Operational Flexibility for Multi-DSA Operations

The December 2020 final rule established a three-tier performance system and de-certification procedures but did not explicitly address how OPOs managing multiple DSAs would be evaluated when performance varies across service areas. Without clarification, the baseline framework could potentially result in de-certification of an OPO even when some of its DSAs perform well, requiring unnecessary transitions in well-performing territories and imposing avoidable costs on the system.

This final rule allows OPOs designated to serve more than one DSA to continue serving well-performing DSAs while losing designation only for an underperforming tier 3 DSA, provided the OPO remains designated to at least one other DSA that is not tier 3. The final provisions at §§ 486.309 and 486.316 establish that CMS may remove designation to a tier 3 DSA without de-certification when an OPO is designated to other DSAs that are not tier 3. This enables continuity of service in well-performing territories, preserves OPO staff relationships with hospitals and donor families, and avoids unnecessary operational transition costs in tier 1 and tier 2 DSAs.

Using preliminary analysis of 2026 OPO performance data, we estimate that approximately 14 DSAs may be classified as tier 3 and therefore opened for competition as part of the 2026 re-certification process, after any applicable appeals are exhausted. Tier 2 DSAs will also be opened for competition; however, because a tier 2 OPO may retain its DSA through competition, we do not assume additional DSA transitions resulting from tier 2 competitions for purposes of this illustrative benefit estimate. For purposes of this estimate, we assume that the 14-tier 3 DSAs will be awarded to 14 successor OPOs, with each successor OPO assuming responsibility for one additional DSA.

In the subsequent performance evaluation cycle ending in 2030, we assume that 5 of these 14 successor OPOs will have mixed performance across their DSAs, meaning each will have at least one DSA with tier 1 or tier 2 performance and one DSA with tier 3 performance. Under the final policy, CMS would remove designation only for the underperforming tier 3 DSA, rather than de-certifying the OPO, provided the OPO remains designated to at least one other DSA that is not tier 3. For purposes of this estimate, we assume that this policy avoids one unnecessary transition for each of the 5 mixed-performance OPOs. Using the baseline transition cost of $100,000 per DSA from the December 2020 final rule, avoiding 5 unnecessary transitions produces an estimated one-time benefit of $500,000, calculated as 5 avoided transitions × $100,000 per transition.

This estimate is conservative because it captures only avoided direct

[36] Data sources include CMS inquiry tracking data (2020–2025), estimated 60 hours per OPO absent the rule and 20 hours with the rule based on consultation with OPO compliance officers, weighted average OPO hourly rate of $132, GS–14 hourly rate of $145 from OPM 2025 pay tables, estimated 3 requests per OPO annually absent the rule and 1 request with the rule, 20 hours per request based on staff time tracking, and assumes a 67 percent reduction in inquiry volume (from 165 to 55 requests annually).

transition costs. It does not quantify additional benefits from maintaining hospital relationships, preserving staff knowledge, avoiding disruption in well-performing DSAs, or reducing CMS administrative burden associated with managing unnecessary transitions. The estimate also depends on the number of successor OPOs that are ultimately designated to multiple DSAs and the share of those OPOs with mixed-tier performance in the subsequent evaluation cycle.

(2) Qualitative Benefits Not Monetized

The following benefits are real and significant but cannot be readily monetized due to the difficulty of isolating causal effects, the diffuse nature of the benefits, or the lack of empirical data to support quantification. For each qualitative benefit, we describe the benefit, explain why monetization is not feasible, and connect the benefit to the regulatory objectives of improving OPO accountability, organ procurement, transplantation outcomes, and system stability.

(a) Improved System Efficiency and Continuity

This final rule reduces the risk of service disruptions by establishing clearer procedures for successor selection, multi-DSA transitions, non-renewal, de-certification, appeals, and transitions between incumbent and successor OPOs. The final rule clarifies when CMS may select a successor OPO when there is insufficient time to conduct a full competition, the criteria CMS will consider in successor selection, and how OPOs must cooperate during transitions.

In addition, this final rule includes targeted modifications in response to comments regarding CMS-assigned DSAs.

When CMS assigns an OPO to an additional DSA because no other OPO applies for competition or there is insufficient time to conduct a competition, CMS would not open the OPO's original DSA for competition solely because performance in the original DSA declines from tier 1 to tier 2 or fails to improve from tier 2 to tier 1, provided that the original DSA does not fall to tier 3. In practical effect, the OPO would not have to compete to retain its original DSA based solely on tier 2 performance following the CMS assignment. The final rule also allows an OPO assigned a DSA when there is insufficient time to conduct a competition to remain designated to that DSA for a full re-certification cycle. These final modifications may reduce disincentives for OPOs to accept CMS assignment and may support continuity of organ procurement services in DSAs that otherwise could experience disruption.

We cannot readily quantify this benefit because the number of future CMS assignments, changes in DSA tier assignments following CMS assignment, and transition scenarios is uncertain. The impact of any service disruption would vary based on DSA-specific circumstances, including hospital relationships, geography, staffing capacity, donor volume, and the operational readiness of the successor OPO. However, the benefit is important because maintaining continuity of organ procurement services during transitions supports the stability of the organ donation and transplantation system.

(b) Enhanced Competition Efficiency

The December 2020 final rule established a three-tier performance system and competition framework but did not provide procedural and technical details on multi-DSA competition scenarios, designation consequences, or transition requirements. This final rule enhances competition procedures, including separate DSA-level outcome-measure evaluation when an OPO is designated to multiple DSAs, OPO-level evaluation of process performance measures, competition eligibility for OPOs subject to non-renewal, and transition requirements between incumbent and successor OPOs.

Based on updated performance data, we estimate that 35 DSAs may open for competition during the re-certification cycle. Clear procedures are especially important given the scale of expected competition activity. The final rule helps OPOs understand when they may compete, how CMS will evaluate tier assignments across DSAs, how transition plans will be handled, and how CMS will apply the existing competition selection criteria. We cannot readily quantify this benefit because the dynamic effects of enhanced competition on OPO performance improvement are difficult to isolate and measure. The counterfactual—what performance would have been without clearer competition procedures—is speculative. The benefit also manifests over time as the competitive environment drives continuous improvement across the OPO system rather than generating a discrete, immediately measurable outcome.

This benefit is significant because the efficiency of the competition process directly affects the quality and continuity of organ procurement services in DSAs opened for competition. Clear procedures support transparent decision-making, reduce uncertainty for OPOs and CMS, and help ensure that competition decisions focus on maximizing organ procurement and transplantation outcomes.

(c) Improved Definitional Clarity

This final rule revises definitions at § 486.302 to support consistent interpretation across OPOs and CMS. These revisions include revising the adverse event framework, clarifying ''donor'' and ''organ'' for purposes of pancreata used in islet cell research, and defining ''unsound medical practices.''

We cannot readily quantify this benefit because the value of regulatory clarity is diffuse and difficult to monetize. It manifests in reduced confusion, more consistent implementation, better strategic planning, and fewer disputes—benefits that are real but difficult to isolate and measure. The causal link between definitional clarity and specific operational improvements is indirect and influenced by multiple factors, including OPO organizational culture, staff training, leadership priorities, and transplant-center practices.

This benefit is significant because interested parties' inquiries and public comments demonstrate that definitional ambiguity creates operational challenges. Clear definitions help OPOs implement requirements consistently and support CMS survey and oversight activities.

C. Alternatives Considered

Throughout the preamble sections, we summarize the policies proposed in the January 2026 proposed rule, the public comments received, and the policies we are finalizing in this final rule. In developing this final rule, we considered alternative approaches that could have provided additional flexibility, imposed more prescriptive requirements, or retained the existing regulatory text without revision. We selected the policies finalized in this rule to provide clearer operational and administrative requirements, maintain OPO accountability, support continuity of organ procurement services, and avoid unnecessary burden or disruption.

With respect to the definitions of ''medically complex donor'' and ''medically complex organ'' and the related QAPI requirements, we considered finalizing the proposed definition with specific clinical criteria, including DCD donors and donors with elevated KDPI scores, as well as a modified, guideline-based definition. After considering public comments

raising concerns that no standardized, nationally recognized definition of a medically complex donor currently exists and that the associated QAPI requirement could increase documentation burden without a current consistent basis for identifying affected donors and organs, we are not finalizing the proposed definitions of ''medically complex donor'' or ''medically complex organ,'' and we are not finalizing the QAPI requirement proposed at § 486.348(e). CMS may consider this issue in future rulemaking if a consensus emerges to support a standardized definition of medically complex donor.

With respect to designation, re-certification, competition, and OPOs designated to more than one DSA, we considered alternative approaches that would have imposed more prescriptive requirements on how OPOs structure their operations when designated to multiple DSAs. These alternatives included requiring OPOs to maintain separate DSAs in all circumstances or adopting additional approval requirements before an OPO could determine whether to maintain separate DSAs or consolidate DSAs where permitted under the regulation. We also considered alternative approaches for CMS-assigned DSAs and the impact of assignment on an OPO's existing DSAs. After considering public comments, we are finalizing an approach that provides OPOs flexibility to structure operations in a manner appropriate for their DSAs while maintaining CMS oversight and accountability through the certification, designation, re-certification, competition, survey, and enforcement framework. We are also finalizing targeted modifications for CMS-assigned DSAs to reduce disincentives for OPOs to accept assignment while preserving accountability for tier 3 performance.

With respect to non-renewal, de-certification, appeals, and competition procedures, we considered retaining the existing regulatory text without further clarification. We also considered alternative approaches to the timing and structure of the appeals process and the transition process for DSAs opened for competition. We are finalizing revisions to clarify the distinction between non-renewal, de-certification, and removal of designation to a tier 3 DSA without de-certification; update appeal procedures; and establish transition requirements. We believe these final policies provide greater transparency and predictability for OPOs and CMS while supporting timely resolution of enforcement and designation decisions and continuity of organ procurement services.

With respect to human resources, we considered finalizing the proposed licensure, certification, or registration requirement for personnel performing clinical duties. Commenters raised concerns that the proposed requirement could create operational challenges because OPO staff roles are specialized, may not align neatly with State licensure frameworks, and may include activities that are distinct from direct patient care. After considering public comments, we are not finalizing the proposed licensure, certification, or registration requirement at this time. We are finalizing only the medical director conforming change for multi-DSA operations and may consider broader personnel qualification issues in future rulemaking.

With respect to information management, we considered whether to impose additional reporting or documentation requirements related to organs recovered and sent for research, including pancreata used for islet cell research. We are finalizing the recordkeeping requirement at § 486.330(b) as proposed because it supports CMS' ability to validate the disposition of organs sent for research while allowing OPOs flexibility in the types of records that may be maintained, provided they maintain documentation from an IRB or other formal authorizing body, as appropriate, the research institution, the principal investigator, and study contacts. We are not finalizing additional reporting requirements in this rule.

Overall, we believe the alternatives finalized in this rule appropriately balance accountability, operational flexibility, administrative clarity, and continuity of organ procurement services. The final policies clarify and refine the regulatory framework established by the December 2020 OPO final rule without imposing unnecessary requirements beyond those needed to support implementation, oversight, and continued improvement in the organ donation and transplantation system.

D. Regulatory Review Cost Estimation

Due to the uncertainty involved with accurately quantifying the number of entities that will review this proposed rule, we assume that all 54 OPOs will review this rule. While other individuals and providers may also review the rule, we estimate that doubling the number of OPOs (108 reviewers) provides a reasonable approximation of the total number of reviewers. We acknowledge that this assumption may understate or overstate the actual review costs.

For purposes of this estimate, we assume each reviewer reads approximately 100 percent of the rule and the average reading speed is 250 words per minute. This rule contains approximately 60,000 words, which equates to 4 hours reviewing the rule. Using a weighted average hourly rate of $132 for OPO executive directors and legal staff, adjusted by 100 percent for fringe benefits and overhead consistent with the 2020 final rule methodology, we estimate total review costs of $57,024, calculated as 108 reviewers × 4 hours × $132, rounded to $57,000.

E. Accounting Statement

As required by OMB Circular A–4 (available online at *www.whitehouse.gov/wp-content/uploads/2025/08/CircularA-4.pdf*), we have prepared an accounting statement in Table 7 showing classification of the costs, transfers, and benefits associated with the provisions of this final rule. This final rule imposes incremental costs of approximately $16.4 million in Year 1 and $7.91 million in recurring annual costs. Year 1 costs include approximately $15.11 million for OPOs and $1.36 million for CMS. Recurring annual costs include approximately $7.56 million for OPOs and $349,000 for CMS.

The final rule does not create new transfer payments beyond those established in the December 2020 final rule baseline. Quantified benefits are estimated at $583,000 annually from reduced implementation inquiry and compliance-interpretation burden, with an additional $500,000 one-time benefit due to increased operational flexibility for multi-DSA. This statement provides our best estimate for the Medicare and Medicaid provisions of this final rule.

TABLE 7: Accounting Statement

Category	Estimate	Units		
		Year Dollar	Discount Rate	Period Covered
Annualized Monetized Costs, OPOs	**$9.2 million to $9.4 million/year**	2024	3% or 7%	2027–2031
Annualized Monetized Costs, Government	**$0.55 million to $0.56 million/year**	2024	3% or 7%	2027–2031
Annualized Monetized Benefits, OPOs	**approximately $0.4 million/year**	2024	3% or 7%	2027–2031
Annualized Monetized Benefits, Government	**approximately $0.3 million/year**	2024	3% or 7%	2027–2031
Annualized OPO benefits include annual recurring benefits from reduced implementation inquiry and compliance-interpretation burden and annualized one-time benefits from operational flexibility for multi-DSA operations. Totals may not sum precisely due to rounding.				

F. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to analyze options for regulatory relief of small entities if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we treat all OPOs as small entities. OPOs are classified under North American Industry Classification System code 621991 (Blood and Organ Banks), which has a SBA small business size standard of $40.0 million in annual receipts. Under 42 CFR 486.303(b), all OPOs must be non-profit entities. Under the RFA, a ''small entity'' includes a ''small organization,'' which includes a not-for-profit enterprise which is independently owned and operated and is not dominant in its field. While each OPO operates as the sole designated organ procurement entity within its localized Donation Service Area (DSA), no single OPO exercises a controlling influence or holds a dominant share in the national organ procurement sector (13 CFR 121.102(b)). Thus, they are not dominant in their field and qualify as small entities.

1. Organ Procurement Organizations (OPOs)

To assess the magnitude of the rule's economic impact, we use OPO-specific revenue data from Medicare cost reports rather than the SBA small-business size standard or industry-wide revenue data. Revenue data are available for 47 independent OPOs [37] and we used the most recently available revenue data for each OPO. Revenue amounts are expressed in 2025 dollars.[38] While all OPOs must be non-profit, the remaining OPOs are hospital-based organizations and do not separately report OPO-specific revenues in these cost reports. For the purposes of this analysis, we have excluded these hospital-based OPOs from our primary revenue calculations but we expect that since these OPOs are part of larger hospital systems, the requirements we are finalizing would not have an economically significant impact on them. For the remaining 47 independent OPOs, annual revenues range from approximately $7.5 million to $210.0 million.[39] In Year 1, we estimate total OPO costs of approximately $15.11 million. However, to evaluate the regulatory burden of this rule, we must distinguish between mandatory compliance requirements and voluntary business decisions under our competitive framework.

If an OPO's designated DSA is assigned to Tier 1, that designation is automatically retained without competition and the OPO is eligible for re-certification. While an OPO with a Tier 1 DSA designation may choose to compete for other open Tier 2 or Tier 3 DSAs, such actions represent discretionary business expansion decisions rather than mandatory compliance burdens. Conversely, an OPO designated to a DSA assigned to Tier 2 must successfully compete to retain its designation, making this a mandatory compliance cost. However, any participation by that OPO in a competition to acquire *additional, separate* DSAs is entirely optional. Small entities would only choose to incur these optional costs if they anticipated private business benefits (for example, geographical expansion and increased service revenues) that exceeded the associated application costs. Thus, when considering the net impact of these activities on small entities, we conclude that these activities do not represent an incremental burden and, all else equal, may represent an unquantified beneficial impact.

Consequently, we remove these optional, expansive competition costs from our mandatory compliance estimate reported in the regulatory impact analysis. Excluding approximately $4.43 million in optional competition application expenses results in a mandatory Year 1 compliance cost estimate of approximately $10.68 million, which equals an average mandatory compliance cost of approximately $198,000 per OPO.[40]

Rather than relying on sector-wide averages, our analysis of the distribution of these mandatory compliance costs relative to individual entity revenues

[37] CMS analysis of Organ Procurement Organization Medicare cost report data (Form CMS–216–94) from the Healthcare Cost Report Information System (HCRIS). CMS used the most recently available 2024 cost report data for independent OPOs, except for the Hawaii OPO, for which 2023 revenue data were used because of an error in the 2024 cost report. Form CMS–216–94 is used for independent OPOs and is not used by hospital-based OPOs.

[38] Revenue amounts were converted to 2025 dollars using the Federal Reserve Bank of Minneapolis Inflation Calculator, available at *https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator.*

[39] CMS analysis of Medicare cost report revenue data for the 47 independent OPOs described previously in this final rule.

[40] CMS calculated the average Year 1 regulatory cost per OPO by dividing approximately $10.68 million in mandatory Year 1 OPO costs (which excludes $4.43 million in optional, expansive competition costs) by 54 OPOs, resulting in approximately $198,000 per OPO. Over the 5-year analysis period, approximately $7.56 million in annualized OPO costs divided by 54 OPOs results in an average annualized cost of approximately $140,000 per OPO.

shows that a flat Year 1 cost of $198,000 represents an economic impact ranging from 0.09 percent for the largest OPO (with $210.0 million in revenue) to 2.64 percent for the smallest OPO (with $7.5 million in revenue). Because the economic impact on 100 percent of independent OPOs is below the 3.0 percent significant economic impact threshold,[41] even for the OPO with the lowest revenue, we conclude that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing a final regulatory flexibility analysis.

2. Section 1102(b) of the Social Security Act—Small Rural Hospitals

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary has certified, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals. Although commenters raised concerns regarding rural and under-resourced areas, this final rule directly regulates OPOs and CMS administrative processes, not small rural hospitals. The final rule does not impose new direct compliance obligations on small rural hospitals.

G. Unfunded Mandates Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2026, that threshold is approximately $193 million.

This final rule imposes estimated costs of approximately $16.4 million in Year 1 and $7.91 million in recurring annual costs, which is well below the UMRA threshold. Recurring annual costs beyond Year 1 comprise $7.56 million for OPOs and $349,000 for CMS. The final rule does not mandate any spending requirements for State, local, or tribal governments. While the rule imposes costs on OPOs, which are private sector entities, these costs are substantially below the UMRA threshold.

These costs represent clarifications and refinements to the operational and administrative requirements established in the December 2020 OPO final rule, rather than fundamental system restructuring. The costs are primarily administrative and operational in nature and include training, documentation updates, enhanced coordination activities, competition-related costs, transition planning, multi-DSA operational costs, and compliance with clarified requirements.

As noted in the December 2020 OPO final rule, reimbursement by both public and private payers would cover reasonably estimated costs associated with organ procurement activities. OPOs are reimbursed for their organ acquisition costs through Medicare, Medicaid, and private insurance payments. The estimated costs are well below the UMRA threshold. Therefore, the requirements of UMRA do not apply to this final rule.

H. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

This final rule is directed at OPOs, which are private nonprofit organizations certified by CMS to coordinate organ procurement activities within designated service areas. The proposed rule does not impose substantial direct requirement costs on State and local governments, preempt State law, or have Federalism implications. The proposed clarifications and refinements to the OPO conditions for coverage affect only OPOs and CMS administrative processes. State and local governments are not directly regulated by these provisions. While some State and local government entities may interact with OPOs in their capacity as healthcare providers or in other roles, the proposed rule does not impose requirements or costs on governmental entities in their governmental capacity. The estimated costs of this final rule, approximately $16.4 million in Year 1 and $7.9 million in recurring annual costs, fall entirely on OPOs and the Federal Government. Year 1 costs include approximately $15.11 million for OPOs and $1.37 million for CMS. Recurring annual costs include approximately $7.56 million for OPOs and $349,000 for CMS. No costs are imposed on State, local, or tribal governments. Since this final rule does not impose substantial direct requirement costs on State or local governments, does not preempt State law, and does not have Federalism implications, the requirements of Executive Order 13132 are not applicable to this final rule.

I. Congressional Review Act

The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined that this final rule is not a ''major rule'' as defined by the Congressional Review Act (CRA), 5 U.S.C. 801–808 (originally enacted as subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996).

Consistent with 5 U.S.C. 801(a)(1)(A), which applies to all final rules regardless of major-rule status, CMS will submit this final rule and the required report to both Houses of Congress and the Comptroller General before the rule takes effect.

J. E.O. 14192, ''Unleashing Prosperity Through Deregulation''

Executive Order 14192, entitled ''Unleashing Prosperity Through Deregulation,'' was issued on January 31, 2025, and requires that ''any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.''

For purposes of E.O. 14192 accounting, we followed OMB's *Accounting Methods under Executive Order 14192,* which applies a 7 percent discount rate, a perpetual time horizon, and expresses amounts as 2024 cost or savings equivalents.

This final rule imposes estimated incremental costs of approximately $16.4 million in Year 1 and $7.9 million in recurring annual costs beyond the baseline of $126.7 million established in the December 2020 final rule. Year 1 costs include approximately $15.11 million for OPOs and $1.37 million for CMS. Recurring annual costs include approximately $7.56 million for OPOs and $349,000 for CMS. We estimate that

[41] *See* HHS, *Guidance on Proper Consideration of Small Entities in Rulemakings* (May 2003). HHS generally considers an average annual economic impact of approximately 3 to 5 percent or more to be significant and 5 percent or more of affected small entities to constitute a substantial number.

this final rule will generate approximately $6.93 million in annualized costs, expressed in 2024-equivalent terms using a 7 percent discount rate and a perpetual time horizon. These costs represent clarifications and refinements to operational and administrative requirements rather than fundamental system restructuring. This final rule is consistent with the principles of Executive Order 14192 in the following ways:

- Minimizes Regulatory Burden: The final rule focuses on clarifications and refinements rather than fundamental restructuring of the OPO regulatory framework. In addition, CMS is not finalizing the proposed licensure requirement for personnel performing clinical duties, which avoids potential workforce and implementation burden raised by commenters.
- Provides Regulatory Clarity: By addressing interested parties inquiries and providing clearer guidance on operational and administrative requirements, this final rule reduces uncertainty and compliance costs for regulated entities, enabling OPOs to focus resources on their core mission of organ procurement rather than regulatory interpretation.
- Streamlines Processes: The final clarifications to competition, appeals, non-renewal, de-certification, designation, and multi-DSA operations are designed to make these procedures more transparent and predictable while maintaining accountability.
- Supports Economic Efficiency: By enhancing the efficiency and effectiveness of the organ procurement system, this final rule supports better use of resources within the organ donation and transplantation system.
- Reduces Compliance Uncertainty: The final rule is estimated to save approximately $583,000 annually in reduced inquiry and interpretation costs for CMS and OPOs combined, allowing resources to be redirected toward improving organ procurement outcomes.

Dr. Mehmet Oz, Administrator of the Centers for Medicare & Medicaid Services, approved this document on October 27, 2026.

List of Subjects in 42 CFR Part 486

Administrative practice and procedure, Grant programs—health, Health facilities, Home health care, Medicare, Reporting and recordkeeping requirements, X-rays.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 486 as set forth below:

PART 486—CONDITIONS FOR COVERAGE OF SPECIALIZED SERVICES FURNISHED BY SUPPLIERS

■ 1. The authority citation for part 486 continues to read as follows:

Authority: 42 U.S.C. 273, 1302 and 1320b–8, and 1395hh.

■ 2. Section 486.302 is amended by:

■ a. Revising the definitions ''Adverse event'', ''Donor'' and ''Organ'';

■ b. Adding the definition of ''Unsound medical practices'' in alphabetical order.

The revisions and addition read as follows:

§ 486.302 Definitions.

* * * * *

Adverse event means an untoward, undesirable, and usually unanticipated event that causes death or serious injury or the risk thereof.

* * * * *

Donor means a deceased individual from whom at least one vascularized organ (heart, liver, lung, kidney, pancreas, or intestine) is transplanted. An individual would also be considered a donor if only the pancreas is procured and is used for islet cell transplantation or for islet cell research.

* * * * *

Organ means a human kidney, liver, heart, lung, pancreas, or intestine (or multivisceral organs when transplanted at the same time as an intestine). The pancreas counts as an organ even if it is used for islet cell transplantation.

Organ type	Number of organs transplanted
(1) Right or Left Kidney	1
(2) Right and Left Kidney	2
(3) Double/En-Bloc Kidney	2
(4) Heart	1
(5) Intestine	1
(6) Intestine Segment 1 or Segment 2	1
(7) Intestine Segment 1 and Segment 2	2
(8) Liver	1
(9) Liver Segment 1 or Segment 2	1
(10) Liver Segments 1 and Segment 2	2
(11) Right or Left Lung	1
(12) Right and Left Lung	2
(13) Double/En-bloc Lung	2
(14) Pancreas (transplanted whole, islet transplant)	1
(15) Pancreas Segment 1 or Segment 2	1
(16) Pancreas Segment 1 and Segment 2	2

* * * * *

Unsound medical practices refer to failures by OPOs that create an imminent threat to patient health and safety or pose a risk to patients or the public. These practices include, but are not limited to, failures in governance; patient or potential donor evaluation and management; and procurement, allocation, and transport practices and procedures.

* * * * *

§ 486.303 [Amended]

■ 3. Section 486.303 is amended by:

■ a. Removing paragraph (e); and

■ b. Redesignating paragraphs (f) through (i) as paragraphs (e) through (h), respectively.

■ 4. Section 486.308 is amended by:

■ a. Adding introductory text; and

■ b. Revising paragraphs (a) and (b).

The addition and revisions read as follows:

§ 486.308 Designation of one OPO for each service area.

Re-certification of organ procurement organizations must occur not more frequently than once every 4 years. CMS designates only one OPO per Donation Service Area (DSA).

(a) An OPO is normally designated for an agreement cycle of 4 years.

(1) CMS may adjust the length of a designation period when:

(i) There is a voluntary termination initiated by an OPO as specified at § 486.311(a)(2),

(ii) There is an involuntary termination initiated by CMS as specified at § 486.312(a)(1) or (4);

(iii) Additional time is needed to complete an appeal, conduct a competition, select a successor OPO, or transition the DSA to a successor OPO; or

(iv) There is an extension of an agreement cycle as specified at § 486.316(f).

(2) CMS will conduct a competition for all vacated DSAs, except when there is insufficient time to conduct a competition, as specified in paragraph (a)(4) of this section.

(3) Designation periods following a competition or assignment of a DSA by CMS. The designation period for any newly acquired DSA following a competition as specified at § 486.316(d), or as the result of being assigned a DSA as specified at paragraph (a)(4) of this section or § 486.316(e), will be the remaining portion of the agreement for the OPO's current re-certification cycle.

(4) If there is insufficient time to conduct a competition, CMS may select a successor OPO for designation to the DSA. In selecting a successor OPO, CMS will consider the following:

(i) Contiguity to the DSA;

(ii) Performance on outcome measures at § 486.318;

(iii) History of compliance with the process performance measures at §§ 486.320 through 486.360; and

(iv) Willingness of the OPO to perform the responsibilities for the remainder of the designation period.

(b) A DSA becomes open for competition when:

(1) The DSA is assigned to tier 3 in the final assessment period, as specified at §§ 486.318(b)(6) and 486.316(a)(3), and all administrative appeals are exhausted;

(2) The DSA is assigned to tier 2 in the final assessment period, as specified at §§ 486.318(b)(5) and 486.316(a)(2); or,

(3) The OPO for the DSA is not in compliance with the process performance measures at §§ 486.320 through 486.360, as specified at §§ 486.312(a)(1) and 486.316(b)(1), all administrative appeals are exhausted, and the OPO is pending de-certification.

(4) An OPO for the DSA requests to voluntarily terminate its agreement as specified at § 486.311(a)(2), unless the voluntarily termination is associated with a change in control or ownership or service area as specified at § 486.310 and the changed OPO will continue to serve the DSA.

* * * * *

■ 5. Section 486.309 is revised to read as follows:

§ 486.309 OPO designation to more than one service area.

(a) CMS may designate an OPO to more than one DSA in the following instances:

(1) A change in control or ownership or service area as specified at § 486.310;

(2) As a result of competition as specified at § 486.316; or

(3) A voluntary or involuntary termination of an OPO's agreement and there is insufficient time to conduct a competition as specified at § 486.308(a)(4).

(b) When the conditions under paragraph (a)(1) or (2) of this section are met, the OPO may choose to consolidate the DSAs, maintain separate DSAs, or a combination thereof if more than two DSAs are involved.

(c) When an OPO is designated to more than one DSA, CMS may remove designation to a tier 3 DSA due to non-compliance with the outcome measures at §§ 486.316(a)(3) and 486.318(b)(6).

(1) Removal of a designation to a tier 3 DSA will not result in de-certification unless an OPO is no longer designated to any DSA as specified at § 486.316(b)(2)(iii)(A).

(2) An OPO may appeal the decision to remove a designation to a tier 3 DSA as specified at § 486.314. If an OPO does not appeal the determination, or the OPO appeals and the determination is upheld after the appeal process is completed, the OPO's service area is opened for competition from other OPOs that qualify to compete for open service areas as set forth in § 486.316(c).

■ 6. Section 486.311 is added under undesignated center heading ''Requirements for Certification and Designation'' to read as follows:

§ 486.311 Non-renewal of agreement.

(a) *Non-renewal of the agreement.* CMS will not renew an agreement with an OPO in the following circumstances:

(1) *Competition.* The OPO is unsuccessful in the competition process, as set forth at § 486.316(a)(2), and the OPO is no longer designated to a DSA. A non-renewal under this paragraph (a)(1) is limited to the OPO's agreement for designation to the DSA.

(2) *Voluntary termination.* The OPO sends CMS written notice of its intention to terminate its agreement and the proposed effective date. CMS may approve the proposed effective date, set a different date no later than 6 months after the proposed effective date, or set a date less than 6 months after the proposed effective date if it determines that a different date would not disrupt services to the service area. If CMS determines that a designated OPO has ceased to furnish organ procurement services to its service area, the cessation of services is deemed to constitute a voluntary termination by the OPO, effective on a date determined by CMS. CMS will provide notice to the OPO of the effective date of the voluntary termination.

(b) *OPO notice of non-renewal.* For non-renewal of the agreement for designation to a DSA after a competition, as specified in paragraph (a)(1) of this section, CMS will provide notification to the OPO at least 90 calendar days before the effective date of the non-renewal. The notice states the reasons for non-renewal and includes the end date of the agreement.

(c) *Public notice.* CMS will provide public notice in the service area of the date that a new OPO will be designated for the DSA.

(d) *Cessation of payment.* No payment under titles XVIII or XIX of the Act will be made with respect to organ procurement costs attributable to an OPO that no longer has an agreement with CMS.

■ 7. Section 486.312 is revised to read as follows:

§ 486.312 De-certification.

(a) *Involuntary termination and de-certification.* CMS may de-certify an OPO under the following circumstances:

(1) The OPO no longer meets the requirements for certification at § 486.303, including the conditions for coverage at §§ 486.320 through 486.360, as specified at § 486.316(b)(1), at any time during the re-certification cycle.

(2) The OPO only has tier 3 DSA(s) designated in the final assessment period, as described at § 486.316(b)(2)(iii)(A), at the end of the re-certification cycle.

(3) The OPO is no longer designated to any DSA and does not have data available from the final assessment period to demonstrate compliance with the outcome measures at the end of the re-certification cycle.

(4) In cases of urgent need, such as the discovery of unsound medical practices,

CMS may de-certify an OPO immediately.

(b) *Notice to OPO.* Except in cases of urgent need, CMS provides an initial notice of de-certification to an OPO in writing at least 90 calendar days before the effective date of the de-certification. CMS may extend the effective date of the de-certification as needed to allow for completion of the appeal process under § 486.314, competition of the service area and, if necessary, transition of the service area to a successor OPO. In cases of urgent need, CMS gives written notice of de-certification to an OPO at least 3 calendar days prior to the effective date of the de-certification. The initial notice of de-certification states the reasons for de-certification, explains the available appeal rights, and includes the effective date of the de-certification.

(c) *Public notice.* In cases of urgent need, CMS will provide prompt public notice in the service area of the date of de-certification and the date that a new OPO will be designated for the DSA. With respect to cases described in paragraph (a)(1) or (2) of this section, CMS will provide such public notice after the available appeal rights are exhausted.

(d) *Cessation of payment.* No payment under titles XVIII or XIX of the Act will be made with respect to organ procurement costs attributable to an OPO on or after the effective date of de-certification.

■ 8. Section 486.314 is amended by:

■ a. Revising the introductory text and paragraphs (a) through (d) and (i) through (k); and

■ b. Adding paragraphs (*l*) through (p).

The revisions and additions read as follows:

§ 486.314 Appeals.

OPOs may appeal a de-certification as described at § 486.312(a) or the removal of designation to a tier 3 DSA without de-certification as described at § 486.316(b)(2)(iii)(B).

(a) *Notice of initial determination.* If an OPO is either de-certified or has its designation to a tier 3 DSA removed without de-certification, CMS will send the OPO either a notice of initial de-certification or a notice of removal of designation for a DSA without de-certification.

(1) *Initial notice of de-certification.* An OPO will receive an initial notice of de-certification if it is determined to be non-compliant with the process performance measures at § 486.312(a)(1) or non-compliant with the outcome measures as specified at § 486.312(a)(2) or § 486.312(a)(3).

(2) *Notice of removal of designation to a tier 3 DSA without de-certification.* An OPO will receive a notice of removal of designation to a tier 3 DSA without de-certification if it is determined to be non-compliant with the outcome measures in that DSA but the OPO has other designated DSAs assigned as tier 1 or tier 2, or another designated DSA that is pending evaluation of its outcome measures as specified at § 486.318(c)(3) or (4) at the end of the re-certification cycle.

(b) *Reconsideration*—(1) *Filing request.* If the OPO is dissatisfied with the de-certification determination or the removal of a tier 3 DSA without de-certification, it has 20 calendar days from receipt of the notice of de-certification or removal of designation for a tier 3 DSA without de-certification to file a reconsideration request with CMS. The request for reconsideration must state the issues or findings of fact with which the OPO disagrees and the reasons for the disagreement.

(2) *Failure to request reconsideration.* An OPO must file a reconsideration request before it is entitled to seek a hearing before a hearing officer. If an OPO does not request reconsideration or its request is not made timely, the OPO has no right to further administrative review.

(3) *Reconsideration determination.* CMS makes a written reconsidered determination within 15 calendar days of receipt of the request for reconsideration affirming or reversing the initial determination and the findings on which it was based. CMS reserves the right to extend the 15-calendar day limitation if:

(i) CMS determines more time is needed to thoroughly review and make a reconsideration decision; and

(ii) The extension of time does not prejudice either of the parties.

(4) *Preparing the administrative record.* CMS augments the administrative record to include any additional materials submitted by the OPO and a copy of the reconsideration decision and sends the supplemented administrative record to the CMS hearing officer.

(c) *Request for hearing.* An OPO dissatisfied with the CMS reconsideration decision can file a request for a hearing before a CMS hearing officer within 15 calendar days after receipt of the notice of the reconsideration determination. If an OPO does not request a hearing or its request is not timely received, the OPO has no right to further administrative review and the reconsideration determination becomes the final agency decision.

(d) *Administrative record.* Upon receipt of a request for a hearing, the hearing officer will promptly request the administrative record from the reconsideration official. The hearing officer will send the administrative record to both parties, or make it available through their electronic filing system, within 15 calendar days of receipt of the request for a hearing.

* * * * *

(i) *Scope of review.* An OPO may appeal a de-certification as described at § 486.312(a) and the removal of designation to a tier 3 DSA on substantive or procedural grounds.

(j) *Burden of proof.* The OPO bears the burden of proof by a preponderance of the evidence to demonstrate the notice of de-certification or removal of designation to a tier 3 DSA should be reversed.

(k) *Hearing officer's decision.* (1) The hearing officer renders a decision on the appeal of the notice of de-certification or removal of designation to a tier 3 DSA within 90 calendar days of the hearing. The hearing officer may extend the timeframe for issuing its decision beyond 90 calendar days if the hearing officer determines that 90 calendar days is insufficient for the hearing officer to develop the administrative record and render a legally sufficient decision and that extending the timeframe for issuing its decision would not unduly prejudice either the OPO or the government. If, consistent with the preceding sentence, the hearing officer extends the timeframe for issuing its decision beyond 90 calendar days, the hearing officer shall provide notice of the extension to the OPO and the government.

(2) The hearing officer can affirm or reverse the notice of de-certification or removal of designation to a tier 3 DSA without de-certification.

(3) The hearing officer's decision and the administrative record will be promptly forwarded to the CMS Administrator for his or her discretionary review.

(l) *CMS Administrator discretionary review.* (1) After receiving the hearing officer's decision for review, the CMS Administrator may elect to review the hearing officer's decision or to decline to review the hearing officer's decision. If the CMS Administrator does not elect to review that decision within 30 calendar days of receipt of the hearing officer's decision and the administrative record, the hearing officer's decision is final.

(2) If the CMS Administrator elects to review the hearing officer's decision, the CMS Administrator promptly notifies CMS and the OPO in writing of that election and that each party has the

right to submit arguments on the administrative record from the hearing officer within 15 calendar days of the date of the notification.

(3) The CMS Administrator determines whether the hearing officer's determination should be upheld, reversed, or remanded according to paragraph (m) of this section.

(4) The CMS Administrator's administrative record is composed of:

(i) All documents submitted to the hearing officer or developed during the hearing, including the hearing officer's decision;

(ii) Written arguments from the OPO or CMS explaining why either or both parties believe the hearing officer's determination was correct or incorrect; and

(iii) The CMS Administrator's written decision explaining the reasons for their decision.

(5) The CMS Administrator may render a final decision in writing to the parties within 45 calendar days of notifying the parties that the Administrator has elected to review the hearing officer's decision.

(6) The decision of the hearing officer is final if the CMS Administrator does not render a final decision in writing to the parties within 45 calendar days of electing to review the hearing's administrative record or by a date specified under paragraph (l)(7) of this section.

(7) The CMS Administrator may extend the 45-calendar-day limitation if the:

(i) CMS Administrator determines he or she requires more time to thoroughly review and make a decision regarding the appeal; and

(ii) Extension does not prejudice either of the parties.

(m) *Remand.* (1) The CMS Administrator may remand the appeal to CMS for any appropriate reason, except for:

(i) In cases where the appeal was previously remanded to CMS, evaluation of evidence that was known or reasonably should have been known at the time the appeal was originally remanded.

(ii) Change in a party's representation, regardless of when made.

(iii) Presentation of an alternative legal basis concerning an issue in dispute.

(2) If the appeal is remanded to CMS, the original de-certification or removal of designation for a DSA without de-certification decision is vacated. The agency will comply with any instructions in the remand and will make a new determination.

(n) *Extension of agreement.* If there is insufficient time prior to expiration of an agreement with CMS to allow for completion of the appeals process, competition of the service area and, if necessary, transition of the service area to a successor OPO, CMS may choose to offer to extend the OPO's agreement with CMS.

(o) *Effects of de-certification.* Medicare and Medicaid payments may not be made for organ procurement services the OPO furnishes on or after the effective date of de-certification. If an OPO's designation to a tier 3 DSA is removed without de-certification, Medicare and Medicaid payments may not be made for organ procurement services the OPO furnishes in the affected DSA on or after the effective date of the removal of designation for the tier 3 DSA without de-certification. Once the appeals process is exhausted and the notice of de-certification or removal of designation for a tier 3 DSA without de-certification has not been reversed by the CMS Administrator, CMS will then open the OPO's affected service area for competition as set forth in § 486.316(c).

(p) *De-certification due to urgent need.* If an OPO is de-certified due to urgent need, the affected OPO's service area will be reassigned to another OPO as set forth at § 486.308(a)(4) by the effective date specified in the notice of de-certification provided under § 486.312(b). The OPO has 20 calendar days from receipt of that notice to file a request for reconsideration from CMS. The remainder of the appeals process proceeds as set forth in this section.

■ 9. Section 486.316 is amended by revising paragraphs (a) through (d) and (g) to read as follows:

§ 486.316 Re-certification and competition processes.

(a) *Impact of outcome measures to OPO designation.* Each OPO DSA will be assigned to either Tier 1, Tier 2, or Tier 3, based upon performance on the outcome measures set forth in § 486.318 for the final assessment period of the agreement cycle. The tier assignment of each DSA will determine OPO designation to the DSA.

(1) *Tier 1.* An OPO designated to a DSA that is assigned to tier 1, as specified at § 486.318(b)(4), will retain designation to the DSA for another agreement period. An OPO with tier 1 DSAs is eligible to compete in competitions for any open DSAs if it has been shown by the most recent survey to be in compliance with the requirements for certification at § 486.303, including the conditions for coverage at §§ 486.320 through 486.360.

(2) *Tier 2.* An OPO designated to a DSA that is assigned to tier 2, as specified at § 486.318(b)(5), must successfully compete and be awarded a DSA to retain designation to a DSA for another agreement period. An OPO with tier 2 DSAs is eligible to compete in competitions for any open DSAs if it has been shown by the most recent survey to be in compliance with the requirements for certification at § 486.303, including the conditions for coverage at §§ 486.320 through 486.360. OPOs with DSAs assigned by CMS under the provisions at § 486.308(a)(4) or paragraph (e) of this section will not have any existing or newly assigned DSA opened for competition based on assignment to tier 2 until a full re-certification cycle is completed for the newly assigned DSA.

(3) *Tier 3.* An OPO designated to a DSA that is assigned to tier 3, as specified at § 486.318(b)(6), will have the designation removed at the end of the agreement period. An OPO with all of its DSAs assigned to tier 3 is not eligible to compete in competitions for any open DSAs.

(b) *OPO re-certification and competition*—(1) Compliance with process performance measures. An OPO must maintain compliance with the process performance measures at all times. An OPO with non-compliance in the process performance measures set forth at §§ 486.320 through 486.360 in any DSA will receive an initial notice of de-certification and has the right to appeal that determination as established in § 486.314. If an OPO does not appeal the determination, or the OPO appeals and the determination is upheld after the appeal process is completed, the OPO's service areas are opened for competition from other OPOs that qualify to compete for open service areas as set forth in paragraph (c) of this section.

(2) *Compliance with the outcome measures.* CMS will consider an OPO's DSA tier assignments in the final assessment period for re-certification.

(i) An OPO designated to at least one DSA that is assigned to tier 1 in the final assessment period will be re-certified for another re-certification cycle, as long as it is compliant with conditions for coverage at §§ 486.320 through 486.360 during the most recent survey.

(ii) An OPO that is designated to at least one DSA that is assigned to tier 2 but is not designated to any DSA assigned to tier 1 in the final assessment period will be re-certified if it is compliant with conditions for coverage at §§ 486.320 through 486.360 during the most recent survey. The OPO will be eligible to compete in competitions for any open DSA but will not have the agreement for designation to a DSA

renewed if it is not successful in at least one competition, in accordance with § 486.311(a)(1). If the OPO is not successful in at least one competition, it will receive a notice of non-renewal as specified in § 486.311(b).

(iii) An OPO that is designated to a DSA(s) assigned to tier 3 in the final assessment period will receive one of the following notices:

(A) A notice of its initial de-certification for an OPO that has no other designated DSA that is assigned to tier 1 or tier 2, or another designated DSA that is pending evaluation of its outcome measures as specified at § 486.318(c)(3) or (4) at the end of the re-certification cycle.

(B) A notice of removal of designation to the DSA assigned as tier 3 for an OPO that has another designated DSA assigned as tier 1 or tier 2, or another designated DSA that is pending evaluation of its outcome measures as specified at § 486.318(c)(3) or (4) at the end of the re-certification cycle.

(iv) The OPO has the right to appeal de-certification or removal of designation to a tier 3 DSA as established in § 486.314. If an OPO does not appeal the determination, or the OPO appeals and the determination is upheld after the appeal process is completed, the OPO's tier 3 DSAs are opened for competition from other OPOs that qualify to compete for open service areas as set forth in paragraph (c) of this section.

(3) *Competition.* DSAs assigned as tier 2 or tier 3 in the final assessment period will be opened for competition. A DSA assigned to tier 3 will be opened for competition after any appeal under § 486.314 has been exhausted. The DSA is opened for competition from other OPOs that qualify to compete for open service areas as set forth in paragraph (c) of this section.

(c) *Criteria to compete.* (1) To compete for an open DSA, an OPO would have to be designated to at least one DSA that meets the performance requirements of the outcome measures for Tier 1 or Tier 2, as specified at § 486.318(b)(4) or (5), the requirements for certification at § 486.303, and the conditions for coverage at §§ 486.320 through 486.360 at the most recent routine survey. The OPO must compete for the entire DSA.

(2) An OPO that was subject to non-renewal of its agreement for designation to a DSA for failure to retain its DSA after competition is still eligible to compete in future competitions and enter into a new agreement with CMS, provided it has not been de-certified and met the criteria to compete at the time it entered competition that resulted in non-renewal.

(d) *Criteria for selection.* CMS will select an OPO for designation to an open DSA based on the following criteria:

(1) Performance on the outcome measures at § 486.318.

(2) Relative success in meeting the process performance measures and other conditions at §§ 486.320 through 486.360.

(3) Contiguity to the open service area.

(4) Success in identifying and overcoming barriers to donation within its own service area and the relevance of those barriers to barriers in the open area. An OPO competing for an open service area must submit information and data that describe the barriers in its service area, how they affected organ donation, what steps the OPO took to overcome them, and the results.

* * * * *

(g) *DSA transition.* (1) An incumbent OPO of a DSA must cooperate with a successor OPO that is newly designated to facilitate an orderly transition of the DSA. The incumbent OPO must submit a transition plan, as specified by CMS, that provides details on how all aspects of the OPO operation will be transmitted, including timeframes, to a new OPO.

(2) The successor OPO must submit a transition plan and periodic reports, as specified by CMS, to report on progress in its transition activities until the process is completed. The successor OPO must provide a final notice to CMS no later than 30 calendar days after completion of the transition and prior to the end of the incumbent OPO's agreement.

■ 10. Section 486.318 is revised to read as follows:

§ 486.318 Condition: Outcome measures.

(a) Each OPO's DSA is evaluated by measuring the donation rate and the organ transplantation rate in the DSA.

(1) For all DSAs, except as set forth in paragraph (a)(2) of this section:

(i) The donation rate is calculated as the number of donors in the DSA as a percentage of the donor potential.

(ii) The organ transplantation rate is calculated as the number of organs transplanted from donors in the DSA as a percentage of the donor potential. The organ transplantation rate is adjusted for the average age of the donor potential.

(iii) The numerator for the donation rate is the number of donors in the DSA. The numerator for the organ transplantation rate is the number of organs transplanted from donors in the DSA. The numbers of donors and organs transplanted are based on the data submitted to the OPTN as required in §§ 486.328 and 121.11 of this title. For calculating each measure, the data used is from the same time period as the data for the donor potential.

(iv) The denominator for the outcome measures is the donor potential and is based on inpatient deaths within the DSA from patients 75 or younger with a primary cause of death that is consistent with organ donation. The data is obtained from the most recent 12-months data from State death certificates.

(2) For the Hawaii DSA:

(i) The donation rate is calculated as the number of donors in the DSA as a percentage of the donor potential.

(ii) The kidney transplantation rate is calculated as the number of kidneys transplanted from kidney donors in the DSA as a percentage of the donor potential.

(iii) The numerator for the donation rate is the number of donors in the DSA. The numerator for the kidney transplantation rate is the number of kidneys transplanted from kidney donors in the DSA. The numbers of donors and kidneys transplanted are based on the data submitted to the OPTN as required in §§ 486.328 and 121.11 of this title. For calculating each measure, the data used is from the same time period as the data for the donor potential.

(iv) The denominator for the outcome measures is the donor potential and is based on inpatient deaths within the DSA from patients 75 or younger with a primary cause of death that is consistent with organ donation. The data is obtained from the most recent 12-months data from State death certificates.

(b) Success on the outcome measures will be assessed based on the following parameters and requirements:

(1) For each assessment period, threshold rates will be established based on donation rates during the 12-month period immediately prior to the period being evaluated:

(i) The lowest rate among the top 25 percent in DSA's, and

(ii) The median rate among the DSAs.

(2) For each assessment period, threshold rates will be established based on the organ transplantation or kidney transplantation rates during the 12-month period prior to the period being evaluated:

(i) The lowest rate among the top 25 percent; and

(ii) The median rate among the DSAs.

(3) The 95 percent confidence interval for each DSA's donation and organ transplantation rates will be calculated using a one-sided test.

(4) Tier 1—DSAs that have an upper limit of the one-sided 95 percent confidence interval for their donation and organ transplantation rates that are at or above the top 25 percent threshold rate established for their DSA will be identified at each assessment period.

(5) Tier 2—DSAs that have an upper limit of the one-sided 95 percent confidence interval for their donation and organ transplantation rates that are at or above the median threshold rate established for their DSA but are not in Tier 1 as described in paragraph (b)(4) of this section will be identified at each assessment period.

(6) Tier 3—DSAs that have an upper limit of the one-sided 95 percent confidence interval for their donation or organ transplantation rates that are below the median threshold rate established for their DSA will be identified at each assessment period. DSAs that have an upper limit of the one-sided 95 percent confidence interval for their donation and organ transplantation rates that are below the median threshold rate for their DSA are also included in Tier 3.

(7) For the DSA that includes the non-contiguous State of Hawaii and surrounding territories, the kidney transplantation rate will be used instead of the organ transplantation rate. The comparative performance and designation to a Tier will be the same as in paragraphs (b)(4) through (6) of this section except kidney transplantation rates will be used.

(c) CMS will evaluate OPO performance on the outcome measures at each assessment period.

(1) Performance on the outcome measures is based on an evaluation at least every 12 months, with the most recent 12 months of data available from the OPTN and State death certificates, beginning January 1 of the first year of the agreement cycle and ending December 31, prior to the end of the agreement cycle.

(2) An assessment period is the most recent 12 months prior to the evaluation of the outcome measures in which data is available.

(3) If an OPO takes over another OPO's DSA as a result of a change of control or ownership or service area, as specified at § 486.310, on a date later than January 1 of the first year of the agreement cycle so that 12 months of data are not available to evaluate the OPO's performance in its new DSA, the OPO will be held accountable for its performance on the outcome measures in the new area once 12 months of data are available.

(4) If an OPO takes over a new DSA as a result of a competition, as specified at § 486.316(d), or assignment by CMS as specified at § 486.308(a)(4) or § 486.316(e), on a date later than January 1 of the first year of the agreement cycle, we will hold the OPO accountable for its performance on the outcome measures in the new area:

(i) For the QAPI requirement, specified at § 486.348(d), once 12 months of outcome measure performance data are available.

(ii) For purposes of re-certification, as specified at § 486.316, in the final assessment period of the following agreement cycle.

■ 11. Section 486.322 is amended by revising paragraph (a) to read as follows:

§ 486.322 Condition: Relationships with hospitals, critical access hospitals, and tissue banks.

(a) *Standard: Hospital agreements.* An OPO must have a written agreement with 95 percent of the Medicare and Medicaid participating hospitals and critical access hospitals in each of its designated donation service area(s) that have both a ventilator and an operating room and have not been granted a waiver by CMS to work with another OPO. The agreement must describe the responsibilities of both the OPO and hospital or critical access hospital in regard to donation after cardiac death (if the OPO has a protocol for donation after cardiac death) and the requirements for hospitals at § 482.45 or § 485.643. The agreement must specify the meaning of the terms ''timely referral'' and ''imminent death.''

* * * * *

§ 486.324 [Amended]

■ 12. Section 486.324 is amended in paragraphs (a)(1), (2), and (5) and (b)(2), and (8) by removing the text ''area'' and adding in its place the text ''area(s)''.

■ 13. Section 486.326 is amended by revising paragraph (d) to read as follows:

§ 486.326 Condition: Human resources.

* * * * *

(d) *Standard: Medical director.* The OPO's medical director is a physician licensed in at least one of the States or territories within one of the OPO's service areas or as required by State or territory law or by the jurisdiction in which the OPO is located. The medical director is responsible for implementation of the OPO's protocols for donor evaluation and management and organ recovery and placement. The medical director is responsible for oversight of the clinical management of potential donors, including providing assistance in managing a donor case when the surgeon on call is unavailable.

§ 486.328 [Amended]

■ 14. Section 486.328 is amended in paragraph (c) by removing the text ''area'' and adding in its place the text ''area(s)''.

■ 15. Section 486.330 is amended by revising paragraph (b) to read as follows:

§ 486.330 Condition: Information management.

* * * * *

(b) *Disposition of organs.* The OPO must maintain records showing the disposition of:

(1) Each organ recovered for the purpose of transplantation, including pancreatic islet cell transplantation, including information identifying transplant beneficiaries; and

(2) Each organ recovered and sent for research, including pancreata used for islet cell research. Records shall include, but are not limited to, the following:

(i) Information documenting approval from an IRB or other formal authorizing body, as appropriate;

(ii) Research institution;

(iii) Principal investigator; and

(iv) Study contacts.

* * * * *

■ 16. Section 486.348 is amended by:

■ a. Removing in paragraph (b) the text ''area'' and adding in its place the text ''area(s)'';

■ b. Adding paragraph (c)(3); and

■ c. Revising paragraph (d)(3).

The addition and revision read as follows:

§ 486.348 Condition: Quality assessment and performance improvement (QAPI).

* * * * *

(c) * * *

(3) Adverse events under these requirements include, but are not limited to;

(i) Transmission of an infectious or communicable disease or other disease that may be transmissible from a donor to an organ recipient, such as the transmission, dissemination, and seeding of malignancies;

(ii) Avoidable loss of a medically suitable potential donor for whom consent for donation has been obtained;

(iii) Deviations from the current standards of practice or OPO procedures and policies regarding the evaluation and management of patients or potential donors that result in loss of a patient, potential donor, or transplantable organ(s);

(iv) Delivery to a transplant program of an organ that was not for the intended organ recipient or whose blood type does not match the blood type of the intended organ recipient;

(v) An organ that is lost, or delayed and arrived too late to be transplanted; or

(vi) An organ that arrives at the transplant program in a condition that is incompatible with transplantation.

(d) * * *

(3) If the outcome measure at each assessment period during the re-certification cycle is statistically significantly lower than the top 25 percent of donation rates or organ or kidney transplantation (Tier 2 and Tier 3 DSAs) rates as described in § 486.318(b)(5) and (6), the OPO must identify opportunities for improvement and implement changes that lead to improvement in these measures.

■ 17. Section 486.360 is amended by:

■ a. Revising paragraph (c)(1)(v); and

■ b. In paragraph (e)(2)(i), removing the text ''DSA'' and adding in its place the text ''DSA(s)''.

The revision reads as follows:

§ 486.360 Condition for Coverage: Emergency preparedness.

* * * * *

(c) * * *

(1) * * *

(v) Transplant and donor hospitals in each of the OPO's Donation Service Area(s) (DSAs).

* * * * *

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

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Streamlining Contested Adjudications in Licensing Proceedings; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 51, 52, 53, and 54

[NRC–2025–1501]

RIN 3150–AL58

Streamlining Contested Adjudications in Licensing Proceedings

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC, agency, or Commission) is revising the agency's rules of practice and procedure to streamline contested adjudications in NRC licensing proceedings in response to the Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024 (ADVANCE Act) and Executive Order 14300, Ordering the Reform of the Nuclear Regulatory Commission.

DATES: This final rule is effective on December 3, 2026, and applies to contested adjudicatory proceedings noticed on or after the effective date.

ADDRESSES: Please refer to Docket ID NRC–2025–1501 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Electronically at *https://www.regulations.gov.* Search for Docket ID NRC–2025–1501. Address questions about NRC dockets to Helen Chang; telephone: 301–415–3228; email: *Helen.Chang@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin ADAMS Public Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Spencer, Office of the General Counsel, telephone: 301–287–9115; email: *Michael.Spencer@nrc.gov,* staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Executive Summary

A. Need for the Regulatory Action

The Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024 (ADVANCE Act) was signed into law in July of 2024. The ADVANCE Act establishes requirements to enhance the NRC's timeliness and efficiency, including a broad requirement for efficiency through an updated Mission Statement.[1] As directly relevant to the hearing process, ADVANCE Act § 505(b) requires the NRC to provide ''efficient and timely . . . proceedings'' for a broad category of licensing actions, and ADVANCE Act § 207(c) requires the NRC (for certain reactor combined license applications) to, among other things, complete ''any necessary public licensing hearings and related processes'' not later than two years after docketing the application, to the maximum extent practicable.

Subsequently, the President directed a series of reforms to improve the agency's efficiency and effectiveness in the May 23, 2025, Executive Order (E.O.) 14300, ''Ordering the Reform of the Nuclear Regulatory Commission'' (90 FR 22587, May 29, 2025). As relevant to this final rule, section 5(j) of E.O. 14300 directs the NRC to streamline its public hearing process. Relatedly, E.O. 14300 section 5(a) directs the NRC to establish fixed deadlines for its evaluation and approval of specified licensing actions and requests, section 5(d) directs the NRC to establish an expedited approval pathway for reactor designs tested and demonstrated by the Department of Defense (also referred to as the Department of War (DOW)) [2] or the Department of Energy (DOE), and section 5(e) directs the NRC to ''[e]stablish a process for high-volume licensing of microreactors and modular reactors[.]''

In response to Congressional and Executive action, the NRC has developed this final rule focused on streamlining the agency's rules of practice and procedure. The changes to the contested hearing process will reduce burden, increase clarity, and promote efficiencies in line with deadlines established in accordance with the ADVANCE Act and E.O. 14300.

B. Major Provisions

Major provisions of this final rule include the following:

- Revisions to the contested hearing process that will enable the NRC to generally complete adjudications within 11 to 13.5 months or faster for expedited proceedings.
- A requirement for evidentiary hearings to begin as soon as practicable upon admission of contentions.
- Strict deadlines for the completion of hearings.
- Tailored hearing schedules that correspond to the staff's review schedule to the maximum extent practicable, considering the complexity of the application.
- A reduction in discovery burden on all parties to focus on information of highest value and reflect the greater availability of information due to technological developments.
- Revisions to accelerate Commission review of appeals.
- Elimination, refinement, or addition of provisions that will accommodate the schedule directives of the ADVANCE Act and E.O. 14300.

C. Costs and Benefits

This final rule is considered to be a deregulatory action and will reduce burden for both the government and hearing participants by streamlining contested hearing proceedings. Over the five-year analysis period (2026–2030), the revisions to the contested hearing procedures are projected to yield savings for the public, the industry, and government. The combined net savings would generate cumulative undiscounted savings of $67.4 million. Using 2025 as the base year, the net present value (NPV) of these net savings is $61.7 million, discounted at 3 percent, or $55.2 million, discounted at 7 percent. The projected annualized cost savings would be $13.5 million

[1] ADVANCE Act of 2024, Public Law 118–67, div. B, §§ 206, 207, 501, 504, 505, 506 (2024). For example, Section 506 requires the NRC to periodically improve its performance metrics and milestone schedules for completing safety evaluations ''to provide the most efficient metrics and schedules reasonably achievable.''

[2] The Department of Defense (DOD) was authorized to use the secondary title, the Department of War (DOW), in September 2025 by Executive Order. *See* Executive Order No. 14347, ''Restoring the United States Department of War,'' 90 FR 43893 (dated September 5, 2025; published September 10, 2025).

discounted at 3 percent, or $13.5 million discounted at 7 percent. These values represent net savings, as implementation and transition costs are expected to be minimal.

For more information, please see the regulatory analysis included later in this notice.

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I. Executive Order 14300: Ordering the Reform of the Nuclear Regulatory Commission

On May 23, 2025, the President signed E.O. 14300, ''Ordering the Reform of the Nuclear Regulatory Commission.'' Section 5, ''Reforming and Modernizing the NRC's Regulations,'' directs the NRC to undertake a review and wholesale revision of its regulations and guidance documents as guided by the policies set forth in section 2 of the E.O. This rulemaking addresses section 5(j), which directs the NRC to ''[s]treamline the public hearings process,'' and also supports meeting the objectives of sections 5(a), 5(d), and 5(e) of E.O. 14300, as discussed below.

II. Background

Since its inception, the Commission has periodically taken steps to assess and improve the efficiency of its adjudicatory process, as discussed in a 2004 rule (69 FR 2182, pages 2182 through 2186, January 14, 2004) (hereafter ''2004 Adjudications Rule''). Generally, these reforms have yielded less formal adjudications intended to reduce the burden of litigation costs for all parties and remove procedural mechanisms that are not essential to developing an adequate hearing record. The Commission last finalized a major reformation of its hearing processes in 2004 in anticipation of a significant volume of new proceedings to consider applications for new facilities, to renew operating licenses, to reflect restructuring in the electric utility industry, and to license waste storage facilities.

The Commission now expects a similar increase in licensing applications in the coming years, and Congress and the President have directed the NRC to prepare to review and process these applications as expeditiously as possible. In 2024, Congress passed the ADVANCE Act, which established requirements to enhance the NRC's timeliness and efficiency, such as the direction to update the NRC's mission statement to provide that the NRC's licensing and regulation of the civilian use of radioactive materials and nuclear energy be conducted in a manner that is efficient and does not unnecessarily limit—(1) the civilian use of radioactive materials and deployment of nuclear energy; or (2) the benefits of civilian use of radioactive materials and nuclear energy technology to society. The ADVANCE Act also addresses the hearing process, with section 505(b) amending the Atomic Energy Act of 1954, as amended (AEA) section 181 to require the NRC to provide ''efficient and timely . . . proceedings'' for a broad category of licensing actions. Also, for certain reactor combined license applications, section 207(c) of the ADVANCE Act requires the NRC, to the maximum extent practicable, to (1) complete safety and environmental reviews not later than 18 months of docketing, (2) complete ''any necessary public licensing hearings and related processes'' not later than two years after docketing, and (3) make a final decision on whether to issue the combined license not later than 25 months after docketing.[3]

Building on the ADVANCE Act, the President signed E.O. 14300 ''Ordering the Reform of the Nuclear Regulatory Commission,'' on May 23, 2025 (90 FR 22587, May 29, 2025). Section 3 of E.O. 14300 directs the NRC to consider the benefits of increased availability of, and innovation in, nuclear power to the nation's economic and national security in addition to safety, health, and environmental considerations, when the NRC carries out its licensing and related regulatory functions. In furtherance of the President's directive, E.O. 14300 tasked the NRC with streamlining its public hearing process. As relevant here, section 5 of E.O. 14300 directs the NRC to undertake a review and wholesale revision of its regulations and guidance documents and establishes specific tasks this effort must encompass, including streamlining the public hearings process, as directed by section 5(j).

Relatedly, section 5(a) of the E.O. directs the NRC to establish fixed deadlines for its evaluation and approval of specified licensing actions and other requests from a licensee or potential licensee rather than nonbinding generic milestone schedule guidelines. These deadlines include taking no more than 18 months to make a final decision on an application to construct and operate a new reactor of any type and taking no more than one year to make a final decision on an application to continue operating an existing reactor of any type. Section 5(a) also directs the NRC to adopt shorter deadlines tailored to particular reactor types or licensing pathways as appropriate. In addition, section 5(e) of the E.O. directs the NRC to establish a process for high-volume licensing of microreactors and modular reactors, and section 5(d) of the E.O. directs the NRC to establish an expedited pathway to approve reactor designs that the DOW or the DOE have tested and that have demonstrated the ability to function safely.

In some cases, completing licensing decisions within the E.O.-directed timeframes could turn on timely completion of a contested adjudication. However, the Commission's existing hearing procedures in title 10 of the *Code of Federal Regulations* (10 CFR) part 2, ''Agency Rules of Practice and Procedure,'' provide model milestones that would collectively exceed the timeframes specified in E.O. 14300. And these milestones, which are not binding, are sometimes exceeded in practice. Therefore, the Commission is revising its hearing procedures to support faster adjudications that will enable the agency to meet the licensing timelines contemplated by the ADVANCE Act and E.O. 14300. The NRC believes that the revised adjudicatory deadlines will provide reasonable timeframes for parties to meaningfully raise, and the presiding officer to resolve, disputed issues. These revisions will continue the overall trend, described previously, of reducing the formality in NRC adjudications to enhance efficiency.

The NRC's predecessor agency, the Atomic Energy Commission, at one time believed that the AEA required formal adjudicatory hearings in all cases (2004 Adjudications Rule, 69 FR 2182, page 2183, January 14, 2004). Now the prevailing view is that, with the exception of hearings on applications for licenses to construct and operate

[3] This expedited process applies only to applicants for combined licenses who meet certain requirements regarding, among other things, the use of previously approved designs on existing commercial reactor sites (or on substantially similar sites adjacent thereto), as described in § 207(b).

uranium enrichment facilities, informal hearings will also satisfy the AEA. (2004 Adjudications Rule, 69 FR 2182, pages 2183 through 2186, January 14, 2004). On balance, these amendments generally use simpler, more informal processes and shorter schedules to complete adjudications within the timeframes contemplated in the ADVANCE Act and E.O. 14300.While the final rule establishes three primary pathways for hearings (a ''Standard Proceeding'' for 18-month reviews, a ''Focused Proceeding'' for 12-month proceedings, and an ''Expedited Proceeding'' for faster reviews), the Commission does not intend for these designations to be rigid. Rather, in light of the direction in E.O. 14300 to ''adopt shorter deadlines tailored to particular reactor types or licensing pathways as appropriate,'' the rule does not preclude reliance on the Commission's authority to move a proceeding to a faster pathway when warranted. Additionally, within the pathways, the final rule directs the presiding officer to ensure the hearing schedule does not exceed the staff review schedule to the greatest extent practicable. Collectively, these provisions should ensure that the hearing procedures for each adjudication appropriately reflect the complexity of the issues raised by the underlying application.

The Commission has chosen to use a Licensing Board as the default presiding officer for contested licensing proceedings, including license transfers, because Boards are independent and statutorily established, possess legal and technical expertise, and are well placed to efficiently conduct NRC licensing proceedings given their experience and ability to focus exclusively on adjudicatory matters. Considering the wide variety of situations a Board could face after a contention is admitted, the presiding officer will have considerable flexibility to select the appropriate procedures for resolving disputed issues within the strict timeframes imposed by this rulemaking. For example, these procedures will continue to rely primarily on written pleadings and statements to maintain clarity and precision in the record, although the presiding officer will have the flexibility to convene oral proceedings when necessary.

These revisions will require evidentiary hearings to be held as soon as practicable after a decision admitting contentions. Nonetheless, to support more efficient and timely resolution of admitted contentions in certain circumstances, the procedures and practice will still provide for motions to dismiss contentions and motions for summary disposition prior to an evidentiary hearing.

These procedures also address new or amended contentions filed later in the NRC's review process to ensure that the NRC is still able to complete adjudications in a timely manner. The Commission is making three significant revisions to accomplish this goal.

First, in light of the dynamic nature of our licensing process, parties frequently file new or amended contentions throughout NRC adjudications, often in response to amended applications or other new information. To accommodate these filings within the 18-month and 1-year E.O. 14300 timelines, the revisions establish deadlines the presiding officer must use in setting hearing schedules that will provide sufficient time to (1) fully litigate an initial round of contentions (including an evidentiary hearing on any admitted contentions) and (2) fully litigate a second round of new or amended contentions through an evidentiary hearing on those contentions, even if there is no overlap between the rounds of litigation.

Second, the Commission recognizes that, in rare instances, critical issues could arise sufficiently late in a proceeding to challenge the E.O. 14300 timelines for a decision on the application. To ensure that only critical issues have the potential to be admitted late in the proceeding, these revisions establish that the NRC's standards for reopening the record will apply to contentions raising new issues that are submitted after the date by which the presiding officer would be expected to enter an initial decision after an evidentiary hearing on the initial round of contentions, assuming that the evidentiary hearing phase immediately commences upon the admission of the contention and there are no delays along the way.

Third, these revisions establish that new or amended contentions would not be considered pending before the agency until the presiding officer finds there is good cause for submitting these contentions after the prescribed initial filing deadline for contentions (*i.e.,* that they have been timely submitted based on new, materially different information). This change will, as discussed later in this notice, eliminate the possibility of parties delaying licensing in certain proceedings simply by filing an untimely new or amended contention.

As stated previously, the Commission is establishing hearing schedules that would allow for two non-overlapping hearings to be conducted within the 18-month and 1-year E.O. 14300 timelines—one hearing for contentions submitted by the initial filing deadline for contentions and a second hearing held thereafter on a new or amended contention arising later in the review. The revisions to 10 CFR part 2 primarily accomplish this acceleration by requiring the presiding officer to commence the evidentiary hearing as soon as practicable after admitting contentions. In contrast, evidentiary hearings generally do not begin under the existing rules until after the staff completes its review.

This change also reflects the Commission's understanding that the E.O.'s discussion of fixed deadlines for the NRC's evaluation to support a final decision on the application refers to the agency's approval of the licensing action or other request if the NRC's evaluation determines that applicable requirements are met. Given this understanding, the changes in this final rule focus on ensuring that there is a final presiding officer decision on all contested issues within the E.O. 14300 timelines as these decisions have immediate effect by default, regardless of the pendency of appeals. As such, the presiding officer's decision would allow the licensing decision to be made even in circumstances where the AEA requires a hearing to be completed before the issuance and effectiveness of a license. Consequently, in this final rule, the appeals process occurs outside of the scope of the fixed deadlines outlined in section 5(a) of E.O. 14300. Nonetheless, the NRC is streamlining the appeals process to support the overarching goals of the ADVANCE Act and E.O. 14300. First, this final rule makes small changes to the filing deadlines for appeals, shortening the process. Second, the Commission recognizes the importance of issuing its adjudicatory decisions in a timely manner and will use milestones in its internal procedures to effectuate this goal.

While the Commission expects these revisions will substantially improve the efficiency of NRC contested licensing adjudications, they do not constitute a wholesale rewrite of 10 CFR part 2, and many proceedings such as enforcement proceedings, proceedings on denials of applications, or proceedings for construction or operation of a high-level waste geological repository are only minimally impacted. Proceedings under § 52.103 or 53.1452 are also minimally impacted by the changes because the procedures for such hearings are established by case-specific order, and the NRC will consider modifications to the existing standard procedures for these proceedings in a separate process. Further, a final rule published April 15,

2026 (91 FR 20063) increased flexibility in the mandatory hearing process, and a policy statement published June 8, 2026 (91 FR 34661) made changes to the agency's mandatory hearing process for reactors to increase efficiency and timeliness while also enhancing public participation. Additionally, in a separate rulemaking, the NRC proposed changes to the agency's implementation of the National Environmental Policy Act (91 FR 42086, July 7, 2026), which could impact the scope of issues that may be permissible for adjudication in contested hearings. The changes in this final rule are a series of targeted amendments intended to ensure timely and efficient contested adjudication for most NRC licensing actions.

This final rule reflects changes to the proposed rule made in response to public comments, as documented in the ''NRC Response to Public Comments: Streamlining Contested Adjudications in Licensing Proceedings'' (hereafter, Comment Response Document). This final rule also accounts for changes made to the regulations since publication of the proposed rule, including a final rule adding a new 10 CFR part 53, ''Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors'' (91 FR 15696, March 30, 2026), which generally revised 10 CFR part 2 to apply the same processes to applications under 10 CFR part 53, ''Risk-Informed, Technology-Inclusive Regulatory Framework for Commercial Nuclear Plants,'' as would apply to corresponding applications under 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' or 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' This final contested hearings rule includes these changes and consistently treats 10 CFR part 53 applications and licenses the same as the corresponding applications and licenses under 10 CFR parts 50 and 52. This final rule also accounts for changes made by the rule, mentioned previously, that increased flexibility in the mandatory hearing process (91 FR 20063, April 15, 2026). In addition, this final rule makes certain corrections, clarifications, and other minor changes that were not in response to comments but that the NRC identified during the development of the final rule. All changes made in the final rule logically grow out of the proposed rule provisions.

III. Discussion

To achieve the objectives described previously, the Commission is amending 10 CFR part 2 in the following areas:

Hearing Schedule Framework and New Definitions in 10 CFR 2.4

In this rule, the NRC is taking a tailored approach to timeframes for hearing requests and evidentiary hearings to account for specific types of applications rather than the one-size-fits-all approach in the existing regulations, where the same time is generally provided for hearing requests and evidentiary hearings on shorter or simpler applications as on longer or complex applications. The tailored timeframes in this final rule provide sufficient time for the parties to meaningfully raise and litigate disputed issues in the type of proceeding at issue and for the presiding officer to make accurate determinations on these disputed issues. Using tailored hearing timelines is consistent with direction in the Nuclear Energy Innovation and Modernization Act section 102(c), ADVANCE Act section 504, and E.O. 14300 section 5 regarding specified timelines for different types of NRC reviews.

To accomplish this objective, the NRC is establishing three basic timeframes for most licensing proceedings so that the NRC's hearing regulations are clear and manageable and provide greater flexibility, while recognizing that it would be impractical to establish a multitude of timeframes for every type of proceeding and constantly modify hearing processes and regulations to account for the different NRC decision-making schedules as they are updated over time. Nonetheless, as discussed later, the NRC is accounting for potential variability in NRC decision-making schedules by requiring the presiding officer in each proceeding to establish a hearing schedule that, to the greatest extent practicable, will not extend past the NRC staff's scheduled date for completing its review of the application. This provision could, for example, address an expedited NRC review under E.O. 14300 section 5(d) of a reactor design tested and demonstrated by DOE or DOW.

The NRC is adding new definitions in § 2.4 to account for the three basic timeframes established by this rule. The new definitions are ''Standard Proceeding,'' ''Focused Proceeding,'' and ''Expedited Proceeding,'' where Standard Proceedings have the longest hearing schedules, Expedited Proceedings have the shortest hearing schedules, and Focused Proceedings have hearing schedules in between these two categories. The proposed rule followed the same basic scheduling construct as this final rule but did not establish formal labels for Standard Proceedings or Focused Proceedings.[4] The NRC has determined that the clarity of 10 CFR part 2 will be enhanced by formal labels for each basic type of proceeding, and the final rule is accordingly adding definitions for Standard Proceedings and Focused Proceedings. Also, in establishing the basic hearing timeframes in this rule, the NRC has followed the general approach taken in the proposed rule by specifying the applications that are in the Standard Proceeding category and the applications that are in the Expedited Proceeding, with the Focused Proceeding category including, with certain limited exceptions, all other licensing proceedings.

The new definition for ''Standard Proceeding'' captures those applications that generally present more complex technical issues than those applications that fall into the other categories. While the applications in this category are not all equally complex, they are currently subject to the longer 18-month standard NRC review schedules and warrant longer hearing schedules because of the anticipated complexity of material on which contentions could be based, as well as the potential complexity of the technical issues that could be the subject of admitted contentions. As discussed later in this notice, the hearing schedules established for Standard Proceedings support the potential completion of two non-overlapping evidentiary hearings within 13.5 months and allow for Commission consideration of any associated appeals within 18 months.

Reactor applications falling under the Standard Proceeding category are those for the grant of a construction permit, an operating license, or a combined license under 10 CFR part 50, 52, or 53 for a commercial production or utilization facility (other than a non-power production or utilization facility (NPUF)), where the application does not reference an NRC approval providing finality in the adjudicatory proceeding on design matters (*e.g.,* a design certification or manufacturing license).[5]

[4] The preamble for the proposed rule (91 FR 10450, March 3, 2026) referred to Standard Proceedings as ''most complex'' proceedings, referred to Focused Proceedings as ''other'' proceedings, and referred to Expedited Proceedings as ''highly expedited proceedings.''

[5] The proposed rule specifically referenced a design certification and manufacturing license on the basis that these NRC approvals provide finality in the adjudicatory proceeding on design matters. To be consistent with the language used in proposed § 2.1207(c) (final § 2.1207(b)), the final rule adjusts the proposed rule § 2.309(b) language

Continued

For materials licenses, the proposed rule applied the Standard hearing schedules to the following licenses: (1) a license to construct and operate a uranium enrichment facility, and (2) a license to construct or operate a uranium recovery or fuel cycle facility under 10 CFR part 40, ''Domestic Licensing of Source Material,'' or part 70, ''Domestic Licensing of Special Nuclear Material.'' The NRC is retaining these categories in the final rule but in response to comments is clarifying what constitutes a ''fuel cycle facility'' in this category. Specifically, licenses for new fuel cycle facilities that are subject to the Standard hearing schedules are those that are subject to subpart H of 10 CFR part 70, ''Additional Requirements for Certain Licensees Authorized To Possess a Critical Mass of Special Nuclear Material,'' *i.e.,* a facility with a critical mass of special nuclear material that necessitates an integrated safety analysis and other requirements in subpart H because of the facility's safety significance. In addition, in this final rule, the NRC has determined that an application for a new low-level-waste disposal facility under 10 CFR part 61, ''Licensing Requirements for Land Disposal of Radioactive Waste,'' should be included in the Standard Proceeding category. The currently operating low-level waste disposal facilities are licensed by agreement states rather than the NRC, but it is possible that an application for a new facility might be filed with the NRC. If such an application were to be filed, the NRC has determined that the application should be included in the Standard Proceeding category given the types of technical issues that would be involved.

The new definition for ''Focused Proceeding'' covers those applications that are subject to more focused NRC reviews because they are generally less complex than applications within the Standard Proceeding category. As such, Focused Proceedings are amenable to faster NRC reviews and hearing schedules than those reserved for Standard Proceedings. Many applications in the Focused Proceeding category are currently subject to a 12-month standard NRC review schedule. Several others are subject to an 18-month standard NRC review schedule, but the NRC would aim to complete the review of these applications more quickly than 18 months if practical since they would generally be less complex and narrower in scope than other applications subject to an 18-month standard review schedule (*e.g.,* 10 CFR part 52 combined license applications referencing a design certification). Appropriately accelerating hearing schedules, when warranted, for limited scope applications responds to direction in E.O. 14300, section 5(a), which states that the E.O. 14300 deadlines are ''maximum time periods,'' and that ''the NRC shall adopt shorter deadlines tailored to particular reactor types or licensing pathways as appropriate.'' As discussed later in this notice, the hearing schedules established for Focused Proceedings support the potential completion of two non-overlapping evidentiary hearings within 12 months.

Following the approach taken in the proposed rule, the Focused Proceeding category has been defined to include all proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to 10 CFR parts 30, 32 through 36, 39, 40, 50, 52, 53, 54, 55, 61, 70, and 72, except for a Standard Proceeding, an Expedited Proceeding, a proceeding for the construction or operation of a high-level waste geological repository, or a proceeding on a denial of an application. Applications in the Focused Proceeding category include, but are not limited to, operating reactor license renewal applications under 10 CFR part 53 or 54; applications for new 10 CFR part 50, 52, or 53 licenses referencing an NRC approval providing finality in the adjudicatory proceeding on design matters (*e.g.,* a design certification or manufacturing license); 10 CFR part 52 or 53 early site permit applications; materials license renewal applications; applications to construct or operate new facilities under 10 CFR part 70 that are not subject to the requirements of subpart H of 10 CFR part 70; license amendment requests; NPUF license applications; and limited work authorization applications. Moreover, several commenters proposed accelerating Nth-of-a-kind proceedings. The Commission expects that the agency will seek to complete these proceedings significantly in advance of the E.O. 14300 timeframe because the staff will have previously resolved the majority of technical issues. Moreover, the NRC recently finalized a new reactor generic environmental impact statement, which will resolve a significant number of environmental issues in most Nth-of-a-kind proceedings. Therefore, the NRC has also added these proceedings to the Focused Proceedings hearing track. Additionally, commenters noted that faster proceedings would be appropriate for uranium enrichment facilities that employ technologies that have been licensed and operated. The NRC agrees. Given the limited set of technical and environmental contentions these proceedings are expected to raise, the NRC has also added these proceedings to the definition of Focused Proceedings.

Similarly, several commenters suggested providing faster procedures for limited work authorizations. Generally, these proceedings only resolve a limited set of technical and siting issues. Moreover, while in the past a limited work authorization may have occasioned a more detailed environmental review, the NRC recently finalized a generic environmental impact statement for new reactors that would resolve the majority of these issues in most cases. Consequently, the NRC has also included proceedings on these applications within the definition of ''Focused Proceedings.''

The new definition of ''Expedited Proceeding'' captures those applications that are particularly simple or narrow in scope and should be subject to significantly expedited hearing schedules because they will be reviewed on a more expedited basis than the other reviews the NRC would typically handle. As reflected in the standard review schedules on the NRC website at *https://www.nrc.gov/about-nrc/generic-schedules.html,* the NRC currently intends to apply an 18-month or 12-month review schedule to most types of applications it receives. However, some applications have a significantly shorter anticipated review schedule. For example, measurement uncertainty recapture uprate license amendments currently have a six-month review schedule, stretch power uprates have a nine-month review schedule, and amendments adopting a Technical Specifications Task Force traveler using the Consolidated Line-Item Improvement Process currently have a seven-month review schedule. To support expedited decision-making on these applications, the NRC is including these three types of applications within the definition of ''Expedited Proceeding,'' and applying significantly expedited hearing schedules to these proceedings to reflect the shorter review schedules and focused nature of these reviews. Additionally, several commenters noted that licensing applications that reference prior NRC approvals providing issue finality are not likely to spark complex litigation.

to focus on the function that the NRC approval provides (*e.g.,* providing finality in the adjudicatory proceeding on design matters), with a design certification and manufacturing license being given as examples of approvals that provide such finality. A similar adjustment is made to the language of final rule § 2.1207(a).

The NRC agrees that these proceedings would present a sufficiently narrowed set of issues, particularly when the application references a categorical exclusion, that Expedited Proceedings would be warranted in all cases. Applications taking advantage of issue finality and categorical exclusions will have the vast majority of technical and environmental issues resolved for the facility, and the remaining issues are unlikely to present complex contentions requiring extended litigation. Therefore, the NRC has revised the definition ''Expedited Proceedings'' to always include these types of applications. As discussed later in this notice, the hearing schedules established for Expedited Proceedings support the potential completion of an evidentiary hearing within 5 to 5.5 months.

The NRC recognizes that other applications may warrant more expedited treatment in the hearing process than would otherwise apply given the definitions discussed previously. For example, in accordance with E.O. 14300 section 5(e), the NRC has published a proposed rule (91 FR 23628, May 1, 2026) to establish a risk-informed and performance-based regulatory framework in a new 10 CFR part 57 for rapid licensing and high-volume deployment of new microreactors and other reactors with comparable risk profiles. As part of that rulemaking, the NRC has included a specific request for comment on whether to include certain 10 CFR part 57 applications within the ''Expedited Proceeding'' category.

Independent of these efforts, the NRC might later decide to include an application or a class of applications within the scope of ''Expedited Proceeding'' without changes to the *Code of Federal Regulations.* The NRC already has the authority to impose or modify hearing procedures and schedules without changes to the *Code of Federal Regulations* and has done so in the past (*e.g.,* through case-specific orders for uranium enrichment proceedings). To enhance the NRC's agility to expedite proceedings in appropriate circumstances, the Commission may use its authority to determine whether a specific application or class of applications should be included in a different hearing timeline. One commenter pointed out that it would not be appropriate for microreactor applications to impose hearing schedules patterned on 18-month NRC reviews of applications to construct and/or operate larger, complex reactors. As discussed in the Comment Response Document, the NRC agrees with the commenter on this point, but the term ''microreactor'' is not precisely defined and the NRC has not defined, and has not proposed to define, in the regulations a category of smaller commercial reactors licensed under 10 CFR part 50, 52, or 53 that would be subject to more accelerated hearing schedules and processes than larger commercial reactors licensed under the same frameworks. The issue of defining the category of entities that would be considered ''microreactors'' in 10 CFR parts 50, 52, and 53 is outside the scope of this rulemaking.

The definitions of ''Standard Proceeding,'' ''Focused Proceeding,'' and ''Expedited Proceeding'' cover most, but not all, license-related proceedings before the NRC. These definitions do not include enforcement proceedings, proceedings on denials of applications, proceedings for construction or operation of a high-level waste geological repository, or proceedings under § 52.103 or 53.1452 because this rule is not intended to establish schedules for such proceedings. In addition, these definitions do not cover license transfer proceedings because the NRC is taking a more nuanced approach to transfer proceeding schedules, as explained later in this notice, while remaining generally consistent with the schedule timeframes established by this rule.

In sum, these changes would support hearing schedules that align with the overall timeliness goals of E.O. 14300, including the 18-month and 1-year deadlines for certain licensing actions, with more expedited hearing schedules for certain applications when warranted.

Finally, the NRC is adding a new definition of ''Standard Hearing Completion Date'' to § 2.4 to support changes elsewhere in this notice regarding standards and schedules for late-stage challenges after the deadline. As discussed later, the NRC considers it appropriate in certain cases to apply a faster evidentiary hearing schedule to such challenges if the associated contention is admitted for hearing. In addition, the NRC considers it appropriate to apply the reopening criteria to such challenges that raise new issues not within the scope of existing admitted or proposed contentions. The NRC is applying these provisions after the point in the proceeding in which the NRC could have completed an evidentiary hearing in the situation where a contention filed by the hearing request deadline is both admitted for hearing and proceeds to the evidentiary hearing phase immediately after the admission of the contention, consistent with the NRC's policy of holding evidentiary hearings as early as practicable. Because the revised regulations define the time (1) in which contentions, answers, and replies are to be filed, (2) when decisions on contention admissibility are due, and (3) when initial decisions after an evidentiary hearing are to be issued, the NRC is able to compute the Standard Hearing Completion Date for different types of proceedings. The NRC is including the Standard Hearing Completion Dates for these proceedings in § 2.1207 and in **Federal Register** notices announcing an opportunity to request a hearing, as discussed later in this notice. The definition of ''Standard Hearing Completion Date'' in § 2.4 defines how the date is calculated, consistent with the description in this paragraph.

The proposed rule used the term ''Standard Record Closure Date'' rather than ''Standard Hearing Completion Date,'' but the NRC changed the terminology in this final rule to reflect that the ''Date'' is used for two independent purposes: to identify a time after which certain evidentiary hearing schedules are accelerated and to define a time when proposed contentions raising new issues must meet the standards for reopening the record. The NRC also revised the proposed rule definition so that it focuses solely on how the Standard Hearing Completion Date is calculated, with provisions on reopening appearing solely in § 2.326.

Other Changes to Definitions in § 2.4

The NRC is also changing the definitions of ''contested proceeding'' and ''potential party'' in § 2.4, which are related to matters discussed in more detail later in this notice. The NRC is modifying the definition of ''contested proceeding'' to conform to changes to § 2.309(c) regarding motions for leave to file hearing requests, intervention petitions, and contentions after the deadline established for such submissions (collectively ''challenges after the deadline''), in particular to reflect that until the motion for leave to file is granted upon a showing of good cause, the challenge after the deadline would not be considered pending before the NRC. Nonetheless, while the challenge after the deadline is not pending before the NRC, the motion for leave to file would still be considered within the scope of the contested proceeding since the purpose of the motion is to seek permission to file a challenge after the deadline to contest the application. The NRC is also revising the definition of ''potential

party'' by removing references to subpart M of 10 CFR part 2, ''Procedures for Hearings on License Transfer Applications,'' which currently governs proceedings on license transfer applications. Many recent license transfer applications raise technical issues on decommissioning the Commission did not intend subpart M to address. Therefore, the NRC is eliminating subpart M and conducting license transfer proceedings under the more general provisions in subpart L of 10 CFR part 2, ''Simplified Hearing Procedures for NRC Adjudications.''

Representation by Those Who Are Not Attorneys

For the reasons given in the Comment Response Document, the NRC has not adopted the limitations on non-attorney representation that were included in the proposed rule. Also, as discussed in a 2020 decision in the Vogtle proceeding (CLI–20–6, 91 NRC 225), the Commission has given greater latitude to hearing requests submitted by non-attorney intervenors while acknowledging that non-attorney petitioners are still expected to comply with our procedural rules. The NRC is clarifying that it is retaining this latitude for non-attorneys; however, this latitude is limited to construing the pleadings.

Requirements for Publication of ***Federal Register*** *Notices Announcing an Opportunity To Request a Hearing, and Petition To Intervene*

The NRC is making several changes to the regulations in §§ 2.101, 2.104, and 2.105 regarding the publication of **Federal Register** notices announcing an opportunity to request a hearing and petition to intervene. First, the NRC will generally notice these hearing opportunities as early as practicable. The hearing process may not reasonably be initiated before the NRC staff accepts the application for review (*i.e.,* dockets the application), but noticing the hearing opportunity as early as practicable thereafter would accelerate issue identification and resolution and could help mitigate any unavoidable delays that may occur later (*e.g.,* from illness of counsel or a witness). For certain proceedings, § 2.104(a) already requires the staff to issue the hearing notice ''as soon as practicable after the NRC has docketed the application.'' With one exception, the NRC is changing §§ 2.104 and 2.105 to expand this requirement to publish notices as soon as practicable to other **Federal Register** notices announcing a hearing opportunity in order to accelerate the initiation of the adjudicatory process, with a conforming change to § 2.101(f)(5). The exception pertains to notices of proposed action subject to the requirements of § 50.91 or 53.1515. Notices under § 50.91 or 53.1515 are for proposed amendments to specified production and utilization facility licenses. Historically, such notices have generally been published on a periodic basis given their volume. Given the high volume, it would not be practical to require individual **Federal Register** notices for these licensing actions. Also, only a small number of these amendments are challenged in the hearing process, and the associated licensing actions may be taken during the pendency of a hearing if the NRC makes a final no significant hazards consideration determination.

Second, the NRC is modifying §§ 2.104 and 2.105 to provide that **Federal Register** notices announcing a hearing opportunity must provide additional clarity by stating the Standard Hearing Completion Date specified in § 2.1207 and the additional filing deadline information required by § 2.309(b)(5). The basis for this change is described later in this notice in the context of changes to § 2.309 requirements for hearing requests, intervention petitions, and contentions.

Consistent with current practice, **Federal Register** notices will continue to state that prospective participants should notify the Secretary at least 10 days before filing a hearing request. While the agency recognizes this practice as helpful, in that it provides sufficient time to create an electronic hearing docket for a proceeding to facilitate compliance with electronic filing requirements and identify applicant and NRC staff contacts, imposing the practice as an additional requirement, as requested by one commenter on the rule, is not necessary. Outside the rulemaking process, the NRC will look to clarify notice templates to highlight the importance of meeting the requirements for electronic filing, including a timely request to establish a docket.

Good Cause for Extensions of Time

Meeting the licensing deadlines contemplated in the ADVANCE Act and E.O. 14300 will require strict adherence to the schedules described in the rule. Under existing § 2.307(a), time periods in 10 CFR part 2 may be extended either upon a showing of good cause or by stipulation of the parties. An extension of time by stipulation of the parties usually does not result in significant delay as the applicant and NRC staff have an interest in timely adjudication, and such extensions sometimes lead to more efficient resolution of issues (*e.g.,* an extension to complete consultation on a motion). However, contested extensions are more likely to lead to delay, and in recent years the NRC has sometimes found good cause for extensions based on requests detailing ordinary circumstances, such as general resource planning challenges.

The NRC has determined that no changes must be made to § 2.307(a), but in order to ensure that extension requests do not undermine timely adjudications, the NRC is reiterating the need for parties to clearly demonstrate good cause under § 2.307. Good cause is necessarily context specific, and the Commission has previously explained in its 2012 rule (77 FR 46562, August 3, 2012) that good cause in the context of § 2.307 should include ''extraordinary circumstances.'' Extraordinary circumstances are those events that are not within the parties' control, such as sickness or weather. Major holidays could similarly be an extraordinary circumstance. Thus, in normal circumstances the presiding officer should only grant an extension when a circumstance outside of the ordinary occurs that is not brought on by the movant's actions or inactions. In addition, under the ADVANCE Act and E.O. 14300, efficient and timely decision-making on license applications is a key focus area for the agency. Therefore, in circumstances where an extension request has the potential to extend an adjudicatory proceeding past the NRC staff's scheduled date to complete its review, the presiding officer should take into account schedule needs when making its determination and minimize the amount of time necessary to accommodate the circumstances giving rise to good cause.

Requirements for Hearing Requests, Intervention Petitions, and Contentions

The NRC is revising its regulations for hearing requests, intervention petitions, and contentions to (1) refine but not raise the contention admissibility criteria, (2) accelerate filing and decision deadlines consistent with the ADVANCE Act and E.O. 14300, (3) clarify and improve the requirements for hearing requests, intervention petitions, and new or amended contentions filed after the deadline in § 2.309(b) (*i.e.,* ''challenges after the deadline''), and (4) provide clarity to participants on timelines, including when the reopening standards would apply to contentions raising new issues after the Standard Hearing Completion Date. However, as discussed in the Comment Response Document, this final rule is not adopting a provision in the proposed rule that would have

bifurcated filings and decisions on standing and contention admissibility (with standing being addressed on a more accelerated schedule), nor is the final rule adopting proposed § 2.309(k), which would have accelerated the filing of merits information on proposed contentions. As such, this final rule will not change current practice on these two matters: litigants will continue to address standing and contention admissibility in the same filings, the presiding officer will address both matters in the same decision, and litigants will not be required to file additional information on the merits of proposed contentions.

The NRC is also refining the contention admissibility criteria in two ways. First, the NRC is augmenting the requirement in § 2.309(f)(1)(iv) to demonstrate that a contention is material by requiring the petitioner to specify the legal requirement on which the contention is based. Specifying the pertinent legal requirement is important for demonstrating the materiality of the contention, and clarity in this regard can avoid needless confusion about the legal basis for a contention (*e.g.,* safety versus environmental requirements) and the inefficiencies that accompany efforts to resolve such confusion. Second, the NRC is revising § 2.309(f)(1)(vi) to require the petitioner to clearly indicate whether a contention is one of omission or adequacy. Different requirements apply to contentions of omission versus contentions of adequacy, and a lack of clarity regarding the nature of the contention requires additional resources from the NRC staff, applicant, and presiding officers to address.

As discussed previously, the NRC is taking a tailored approach to timeframes for initial filings and decisions thereon to account for specific types of applications rather than the more one-size-fits-all approach in the existing regulations, where the same time is provided for contentions on shorter or simpler applications as on longer or more complex applications. These tailored timeframes provide sufficient time for petitioners to meaningfully raise disputed issues in their hearing requests, for the applicant and NRC staff to file answers to hearing requests, and for the presiding officer to determine whether the standing and contention requirements are met.

Applying the tailoring approach described in the previous paragraph, this final rule includes the following schedules for hearing requests:

- Under revised § 2.309(b), hearing requests and intervention petitions are due within set time periods after publication of the **Federal Register** notice announcing the hearing opportunity, depending on the type of application. As reflected in table 1, the NRC is retaining the existing standard 60-day filing period for Standard Proceedings, retaining the existing 20-day filing period for license transfer applications, providing a 30-day filing period for Expedited Proceedings, and providing a 45-day filing period for Focused Proceedings.
- The NRC is retaining the existing 60-day filing period for hearing requests in Standard Proceedings because the pertinent applications generally present more complex technical issues than other license applications. The NRC is retaining the 20-day filing deadline for license transfer applications because this is a sufficiently expeditious period, and petitioners have demonstrated the ability to comply with this deadline over the last few decades.
- The NRC is establishing a 45-day filing period for hearing requests in Focused Proceedings because the covered applications are generally less complex than applications within the Standard Proceeding category, as discussed previously.
- The NRC is providing a 30-day hearing request period for the types of applications designated as Expedited Proceedings in this final rule—this provides sufficient time to evaluate and file hearing requests on these simple or narrow applications and meets the need for expedited decision-making on those applications. A 30-day period also ensures conformance with the 30-day notice provisions in AEA section 189 for proceedings on license and license amendment applications for production and utilization facilities under AEA sections 103 and 104b. and testing facilities under AEA section 104c.

These initial filing periods reflect the NRC's consideration of the need for timeliness and efficiency pursuant to the ADVANCE Act and E.O. 14300, as well as the anticipated length and complexity of the identified applications. This includes accounting for factors that would reduce the scope and complexity of the adjudicatory proceeding, such as whether an application for a production or utilization facility references a prior NRC approval providing issue finality in the adjudicatory proceeding that encompasses design issues.[6]

The NRC is also taking a tailored approach to the time provided for applicant and NRC staff answers to hearing requests and intervention petitions. Where the existing 60-day period for filing hearing requests is retained, the NRC is retaining the existing 25-day filing period for answers. Where the petitioner's filing period is reduced, the answer period would also be reduced, such that a 20-day answer period would correspond to a 45-day hearing request period, and a 15-day answer period would correspond to 30-day and 20-day hearing request periods. These reduced answer periods are 5 days shorter than the corresponding answer periods in the proposed rule, but as explained in the proposed rule, those proposed answer periods accounted for proposed § 2.309(k), which would have required an applicant's answer (and permitted the NRC staff's answer) to contain additional information on the merits of proposed contentions, including expert declarations. Since this final rule is not adopting proposed § 2.309(k), a modest reduction in the proposed rule answer periods is appropriate, and the due dates reflect the timeliness and efficiency goals in the ADVANCE Act and E.O. 14300 and the expected complexity of the proceedings. Finally, to avoid prejudice to the applicant and NRC staff, the NRC has clarified § 2.309(i) in this final rule so that the deadlines in § 2.309(i) for answers to hearing requests filed by the deadline in § 2.309(b) also apply to hearing requests filed by an approved extension to this § 2.309(b) deadline.

Consistent with existing regulations, replies to answers to hearing requests and intervention petitions submitted by the deadline in § 2.309(b) are due within 7 days of the answers.

These changes necessitate conforming changes to other regulations. For example, the NRC is removing the reference in § 54.27 to a 60-day filing period for hearing requests in power reactor license renewal proceedings because this final rule imposes a shorter filing period in such proceedings and because time periods for filing hearing requests should be specified in 10 CFR part 2 and not in other parts of the NRC's regulations. The NRC is also making other minor changes to § 2.309,

[6] Existing NRC regulations establish that certain NRC approvals finally resolve specified issues in later proceedings referencing the NRC approval. To the extent an issue is finally resolved, it may not be revisited in a later proceeding absent a rule waiver—this effectively limits the scope of that later proceeding. Design certifications and manufacturing licenses are existing NRC approvals that provide issue finality in the adjudicatory proceeding that would encompass design issues. The NRC notes that a standard design approval does not provide finality in the adjudicatory proceeding and therefore would not affect the scope of the adjudication, while an early site permit provides finality in an adjudicatory proceeding but only on a narrower scope of issues that does not include the design of the facility.

such as dividing § 2.309(a) into subparagraphs for clarity. In addition, the NRC is deleting the sentence in § 2.309(a) addressing proceedings under §§ 52.103 and 53.1452 to simplify the text and because that sentence is unnecessary given that other provisions of the NRC's regulations state that the Commission, acting as the presiding officer, will decide whether to grant hearing requests in proceedings under §§ 52.103 and 53.1452.

The NRC is retaining the existing filing periods for hearing requests, intervention petitions, answers, and replies in proceedings under subpart J of 10 CFR part 2, ''Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository,'' proceedings under § 52.103 or 53.1452, and proceedings under § 2.108(b)(2) on a denial of an application. As stated previously, this final rule is not intended to have more than a minimal impact on these types of proceedings. For clarity, the NRC notes that a *demand* for hearing in response to a denial of an application is not subject to the requirements of § 2.309 for hearing requests, and that a hearing request under § 2.108(b)(2) is subject to the requirements of § 2.309 because it comes from a person other than the applicant whose application was denied.

For all proceedings other than those under subpart J of 10 CFR part 2 or under § 52.103 or 53.1452, the NRC is modifying § 2.309(j) to impose accelerated deadlines for decisions by presiding officers on hearing requests submitted by the deadline in § 2.309(b). The decision will be due 30 days from the filing of replies in a transfer proceeding or Expedited Proceeding and 35 days from the filing of replies for other proceedings. Also, the § 2.309 deadlines for presiding officer decisions on hearing requests, intervention petitions, and contentions (including for such filings made after the filing deadline in § 2.309(b)) may be extended only if extraordinary circumstances prevent the presiding officer from issuing a decision by the deadline. Further, at the earliest practicable opportunity, the presiding officer would be required to notify the Commission and the litigants of the delay and the extraordinary circumstances that necessitate a delay. The potential need for oral argument, prehearing conferences, or additional briefing do not by themselves constitute extraordinary circumstances. Finally, while not addressed in the regulation text itself, the revised framework provides the presiding officers flexibility to take steps to accelerate the commencement of the evidentiary hearing phase, such as prioritizing issuance of decisions on admissible contentions.

The NRC is making several modifications to § 2.309(c) to clarify and improve the requirements for challenges after the deadline (*i.e.,* hearing requests, intervention petitions, and new or amended contentions filed after the deadline in § 2.309(b)). First, the NRC is clarifying and revising its regulations to avoid delays in making licensing decisions in certain proceedings due to the submission of challenges after the deadline that arrive near the end of the NRC staff's application review. Currently, petitioners must submit ''motions for leave to file'' contentions after the deadline that must satisfy § 2.309(c). Hearing requests and intervention petitions after the deadline must also satisfy § 2.309(c), although NRC regulations do not require a ''motion for leave to file'' such filings. The NRC is extending the ''motion for leave to file'' concept to hearing requests and intervention petitions after the deadline, and clarifying that challenges after the deadline would not be considered pending before the NRC until the motion for leave to file has been granted upon a showing of good cause under § 2.309(c). These changes address statutory requirements for a pre-effectiveness hearing (or pre-effectiveness hearing opportunity) for certain licensing actions.[7] For example, AEA section 189a.(1)(A) allows the NRC to issue operating licenses for certain facilities ''in the absence'' of a request for hearing from a person whose interest may be affected; therefore, the pendency of a hearing request before the NRC could affect the timing of the NRC's licensing decision. However, the AEA does not require a hearing request submitted after the specified deadline for hearing requests to be considered automatically pending before the NRC regardless of when it was filed. Rather, the related AEA section 189a.(1)(A) requirement specifying a 30-day notice period for operating licenses indicates that Congress contemplated that hearing requests be filed within specified periods.[8] The AEA provides no absolute right to file challenges after the specified notice period, nor does it indicate that petitioners may file challenges at any time they choose and thereby delay NRC action on the application. Under this change, challenges after the deadline would not be considered pending before the agency (and therefore would not delay NRC action on an application subject to a pre-effectiveness hearing requirement) unless and until the motion for leave to file the challenge after the deadline has been granted upon a showing under § 2.309(c) of good cause for filing after the deadline. Thus, as reflected in a new § 2.309(c)(7) and in revisions to § 2.340(i)(2), (j)(4), and (k)(2), the mere submission of such challenges after the deadline would not interfere with timely NRC licensing or regulatory decisions, even for those applications subject to a pre-effectiveness hearing (or pre-effectiveness hearing opportunity) requirement. The effectiveness of the licensing action in these circumstances would be stayed only if the petitioner meets the standard for granting a stay request.[9] To reflect the motion for leave to file terminology, the NRC is also making conforming changes in other paragraphs of § 2.309 and in §§ 2.4 (definition of ''contested proceeding'') and 2.323(a).

Second, the NRC is modifying the timeline for motions for leave to file and associated challenges after the deadline. For the motion and challenge to be considered timely, they would need to be filed within 30 days of the new, materially different information giving rise to the challenge after the deadline. Currently, the regulations do not specify when the filing is considered to be timely, although 30 days is the time usually prescribed in presiding officer scheduling orders. This filing period would be accelerated to 20 days from the new, materially different information in transfer proceedings and

[7] The Commission's 1992 decision in the Shoreham proceeding (CLI–92–4, 35 NRC 69) explains the statutory basis for the pre-effectiveness hearing requirements for specified production and utilization facilities. A partial list of applications for which a pre-effectiveness hearing (or hearing opportunity) is currently required is included in current 10 CFR 2.1202(a). In addition, AEA section 193(b) requires the NRC to complete a ''single adjudicatory hearing'' before issuing a license to construct and operate a uranium enrichment facility. A pre-effectiveness hearing is not required for license transfers, most materials licenses, and reactor license amendments not involving a significant hazards consideration.

[8] The other pre-effectiveness hearing requirements in AEA section 189a. also involve provisions where the NRC is required to give specified notice. In addition, AEA section 193(b)(1)–(2) requires the NRC to conduct a *single* adjudicatory hearing before the issuance of a license for such construction and operation, which does not require that late-filed requests should automatically stay NRC action.

[9] Under Commission case law, the person requesting a stay of a licensing decision must either show irreparable harm that is imminent, certain, and great, or make an ''overwhelming showing'' of likelihood of success on the merits that amounts to a ''virtual certainty.'' See, for example, discussion in the Commission's 2019 decision in the Pilgrim proceeding, *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI–19–11, 90 NRC 258, 264–80 (2019).

Expedited Proceedings because these proceedings are on a shorter timeline, and 20 days provides an appropriate period given the nature and scope of those proceedings. Because challenges after the deadline should be narrowly focused on new, materially different information, 15 days will be provided for answers to challenges after the deadline, consistent with the tailored approach to schedules described earlier. In addition, 7 days is provided for replies associated with challenges after the deadline, consistent with existing requirements. Finally, presiding officer decisions on challenges after the deadline will be due within 25 days of the reply, a deadline reflecting the anticipated narrower scope of challenges after the deadline. These deadlines for answers, replies, and decisions are reflected in new § 2.309(c)(5) and (6).

Finally, the NRC is modifying § 2.309(g) to reflect changes to § 2.310 that are discussed later in this notice, in particular the elimination of provisions in § 2.310(d).

The different timelines under § 2.309 for initial filings and decisions thereon for hearing requests and intervention petitions filed by the deadline in § 2.309(b)(1) and (b)(3) are reflected in table 1 (for simplicity, the table uses ''hearing request'' to refer to both hearing requests and intervention petitions). Table 2 provides the new timelines for motions for leave to file hearing requests, intervention petitions, and new or amended contentions filed after the deadline in § 2.309(b)(1) and (b)(3).

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Table 1: Schedule for Initial Filings/Decisions on Hearings Requests and Contentions Filed by § 2.309(b)(1), (b)(3) Deadlines

Action	Transfer Proceeding 2.309(b)(1)	Expedited Proceeding 2.309(b)(3)(ii)	Standard Proceeding 2.309(b)(3)(i)	Focused Proceeding 2.309(b)(3)(iii)
Hearing Request	20 days from Notice	30 days from Notice	60 days from Notice	45 days from Notice
Answer to Request	15 days from Request	15 days from Request	25 days from Request	20 days from Request
Reply to Answer	7 days from Answer	7 days from Answer	7 days from Answer	7 days from Answer
Decision on Request	30 days from Reply	30 days from Reply	35 days from Reply	35 days from Reply
Total	72 days from Notice	82 days from Notice	127 days from Notice	107 days from Notice

Table 2: Schedule for Filings/Decisions on Motions for Leave to File Hearings Requests and New or Amended Contentions after § 2.309(b)(1), (b)(3) Deadlines

Action	Transfer or Expedited Proceeding 2.309(b)(1), (b)(3)(ii)	Standard or Focused Proceeding 2.309(b)(3)(i), (iii)
Motion for Leave to File Hearing Request/Contention	20 days from New Information	30 days from New Information
Answer to Motion and Request/Contention	15 days from Motion/Request/Contention	15 days from Motion/Request/Contention
Reply to Answer	7 days from Answer	7 days from Answer
Decision on Motion and Request/Contention	25 days from Reply to Answer to Request	25 days from Reply to Answer to Request
SubTotal	47 days from Motion/Request/Contention	47 days from Motion/Request/Contention

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For clarity, the NRC is adding a new § 2.309(b)(5) (with cross-references in §§ 2.104 and 2.105) requiring **Federal Register** notices announcing an opportunity for hearing to specify the applicable filing deadlines for hearing requests, intervention petitions, and contentions (including those filed after the § 2.309(b)(1)–(b)(3) deadlines), and the applicable deadlines for the associated answers and replies. These notices will also be required to specify the Standard Hearing Completion Date for the proceeding, which is important information for application of the revised reopening requirements in § 2.326 and certain scheduling provisions in subpart L of 10 CFR part 2, as explained later in this notice.

Selection of Hearing Procedures

As a result of this final rule, the NRC will use a revised hearing format in subpart L of 10 CFR part 2 to govern the adjudication of admitted contentions in almost all proceedings for the grant, renewal, licensee-initiated amendment, termination, or transfer of licenses or permits subject to 10 CFR parts 30, 32 through 36, 39, 40, 50, 52, 53, 54, 55, 61, 70 and 72. Subpart L is already used for most of these proceedings, but the NRC is increasing its use of subpart L with the following changes:

- The NRC will conduct proceedings on a license to construct and operate a uranium enrichment facility under subpart L of 10 CFR part 2 rather than subpart G of 10 CFR part 2 because the revised subpart L provides a faster, more streamlined process than subpart G and is better suited for licensing proceedings (in fact, most licensing proceedings are already conducted under subpart L). The NRC previously decided to conduct these uranium enrichment proceedings under subpart G because AEA section 193 requires such proceedings to be conducted ''on the record'' (*i.e.,* in

accordance with the formal procedures in the APA for ''on the record'' proceedings). The U.S. Court of Appeals for the First Circuit subsequently concluded in 2004 (391 F.3d 338) that subpart L complies with these formal APA requirements. The revisions to subpart L continue to ensure that these enrichment proceedings comply with the formal APA requirements, while being more streamlined and efficient than the subpart G procedures. The NRC is also removing and reserving § 2.310(c) and revising § 2.700 to reflect this change.

- The NRC is eliminating the provision in §§ 2.310(d) and 2.700 providing that certain proceedings for nuclear power reactors would be held under subpart G of 10 CFR part 2 if (as stated in § 2.310(d)) ''the presiding officer by order finds that resolution of the contention or contested matter necessitates resolution of issues of material fact relating to the occurrence of a past activity, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter.'' This possibility has not been exercised since it was established in the 2004 Adjudications Rule (69 FR 2182, January 14, 2004), and subpart L of 10 CFR part 2 provides for cross-examination, if needed.
- The NRC is removing and reserving § 2.310(g) and subpart M of 10 CFR part 2, which currently governs license transfer proceedings, because the revisions to subpart L of 10 CFR part 2 suitably ensure that transfer proceedings are conducted promptly. As explained later in this notice, the streamlined and expedited subpart L procedures impose strict deadlines for completing license transfer evidentiary hearings in about 2.5 to 3.5 months. Also, subpart M is premised on the Commission serving as the presiding officer for transfer proceedings, but the NRC has decided to employ a Licensing Board as the presiding officer for transfer proceedings, as explained previously. The NRC is making conforming changes to reflect the removal of subpart M in § 2.4 (definition of ''potential party'') and in §§ 2.313(a), 2.901, and 2.1103. In addition, the NRC is revising § 2.1103 to clarify the applicability of subpart K of 10 CFR part 2, adding a reference to 10 CFR part 52 to maintain consistency with the hearing format selection requirements in § 2.310, and providing, consistent with § 2.310(e), that subpart K would apply to the identified spent nuclear fuel storage capacity expansion proceeding upon the request of a party to use subpart K but that, otherwise, subpart L would be used.
- The NRC is revising § 2.310(e) and removing and reserving § 2.310(h) to eliminate the option of using subpart N of 10 CFR part 2 for licensing proceedings that would by default be conducted under subpart L of 10 CFR part 2 (absent those rare circumstances triggering the use of an alternative subpart). Subpart N was created to provide simplified procedures with oral hearings for the expeditious resolution of disputes. However, the NRC has never used subpart N since it was created in the 2004 Adjudications Rule (69 FR 2182, January 14, 2004), and the NRC believes that the oral hearing procedures for subpart N are generally not well suited for licensing proceedings, which often involve complex technical subject matter, where the precision of a primarily written hearing format is desirable.
- To reflect these changes, the NRC is also making conforming changes to § 2.310(a). In addition, the NRC is removing cross-references in 10 CFR parts 52 and 53 to specified subparts of 10 CFR part 2 as potential sources of hearing procedures for certain license applications. These cross-references are not consistent with this rule's changes to § 2.310, and hearing formats should be specified in 10 CFR part 2 and not in other parts of the NRC's regulations. The affected sections in 10 CFR part 52 are § 52.21 and 52.163 (appendix N to 10 CFR part 52, section 8 was considered an affected section in the proposed rule, but section 8 was subsequently removed from the regulations (91 FR 20063, April 15, 2026)). The affected sections in 10 CFR part 53 are §§ 53.1149 and 53.1285.

Timeline for Motions Submitted in Expedited Proceedings

Consistent with the overall streamlining approach of this final rule, the agency is amending § 2.323 to reduce the timelines for submittal of motions and corresponding answers in Expedited Proceedings. As previously discussed, Expedited Proceedings are simpler or narrower in scope and on a shorter timeline than typical proceedings covered under 10 CFR part 2. To achieve timelines commensurate with the substance and pace of Expedited Proceedings, § 2.323(a)(2) is changed to require that motions filed in these proceedings must be made no later than seven (7) days after the occurrence or circumstance from which the motion arises. Further, § 2.323(c) is amended to state that answers to motions in Expedited Proceedings must be submitted within seven (7) days after service of the motion. The agency is also instituting a simple restructuring of § 2.323(c) into three subparagraphs (1)–(3), introducing additional clarity and improving readability of the applicable requirements. Finally, in this final rule, the NRC is making an administrative correction to § 2.323(c) to change the title ''Assistant Secretary'' to the current title ''Deputy Secretary.'' The NRC is also making this correction in §§ 2.346 and 2.808.

Reopening Standards

The NRC intends to complete contested hearings on a schedule that supports licensing within the timelines contemplated by the ADVANCE Act and E.O. 14300. Consequently, to ensure that the adjudicatory process concludes within these timelines, the revised adjudicatory procedures have been constructed so as to generally accommodate an evidentiary hearing on admitted contentions filed by the § 2.309(b) deadline for filing contentions and a hearing on admitted contentions filed after that deadline, even if there is essentially no overlap between the filing and decision schedules for the two. To help accomplish this, the rule introduces a mechanism referred to as the Standard Hearing Completion Date, which facilitates the timely disposition of issues during the contested hearing process. The Standard Hearing Completion Date serves an important dual purpose in maintaining efficiency by identifying a time after which certain evidentiary hearing schedules are accelerated and, as discussed in the following paragraphs, defining a time when proposed contentions raising new issues must meet the standards for reopening the record.

The NRC acknowledges that in rare cases critical issues may arise late in a proceeding that might require the adjudication to exceed the NRC staff review timelines established in accordance with the ADVANCE Act and E.O. 14300. However, only critical issues should lead to such delays. Existing § 2.326 addresses this in part by requiring contentions filed after the record closes for an adjudicatory proceeding to meet the heightened reopening standards in § 2.326, which require the contention to be timely in accordance with § 2.309(c), address a significant safety or environmental issue, and demonstrate that it would likely materially affect the outcome of the proceeding. Under existing case law, the reopening standards would apply after the last live contention in the proceeding is resolved.

However, it is possible under existing precedent for a chain of periodically

filed new or amended contentions, none of them admissible, to hold open the record of the proceeding even to the end of the NRC's review of an application. To avoid this anomalous result and to provide a standard time for when the record would close to new issues for a proceeding, the revisions to § 2.326 add a new paragraph (e)(1) stating that the record for the proceeding will automatically close at the Standard Hearing Completion Date, a date providing sufficient time to hold an evidentiary hearing on admitted contentions submitted by the original deadline. The Standard Hearing Completion Date is based on the timeline structure of a particular proceeding, and applying the reopening standards to new issues raised after this date balances the rights of potential intervenors with the need for efficiency and predictability in a proceeding. The imposition of the reopening standards at this juncture in the timeline is intended to ensure that *new* issues submitted late in the proceeding are only admitted if shown to be critical, and would not affect litigation of issues already raised in a previously filed contention, as explained in subsequent paragraphs.

There may be instances in which an evidentiary hearing is completed before the Standard Hearing Completion Date. Consistent with existing practice, the presiding officer is expected to issue an order closing the record after the evidentiary hearing and before issuing the initial decision. In keeping with existing practice and consistent with themes underlying existing agency case law, § 2.326(e)(1) also provides that the record closes for the adjudicatory proceeding if the presiding officer enters an order closing the record following an evidentiary hearing but before the Standard Hearing Completion Date.

These revisions to § 2.326 comport with existing NRC precedent and are not intended to supersede the concepts already enshrined in case law. The Commission has routinely emphasized that the adjudicatory record for a proceeding closes at the conclusion of an evidentiary hearing, for example, in a 2012 decision in the Pilgrim proceeding (CLI–12–3, 75 NRC 132). Also, the Commission has applied the reopening provisions even earlier in a proceeding (*e.g.,* when a proceeding terminates once all contentions have been decided), such as in the Commission's 2012 decision in the North Anna proceeding (CLI–12–14, 75 NRC 692). Therefore, under existing precedent, the proceeding would terminate and the reopening provisions would apply in a situation when a presiding officer denies all hearing requests filed by the deadline in § 2.309(b) and there are no pending contentions in the proceeding.

The Commission has also recognized that if some issues are pending once the record closes, the record may remain open on those limited issues; an example is the Commission's decision in the Pilgrim proceeding (CLI–12–3, 75 NRC 132). This practice of keeping the record open for particular issues while closing the overall record for the proceeding has been supported in federal court in a 2013 decision in *Massachusetts* v. *NRC* (708 F.3d 63, footnote 18). Therefore, the new § 2.326(e)(1) also clarifies that if other contentions either remain pending or are subject to a motion for leave to file at the time the record closes, the record will remain open only with respect to the particular issues raised by those contentions. As a result, petitioners could continue to litigate live contentions filed prior to closure of the record under final § 2.326(e)(1) without having to meet the reopening standards. This would include (in certain narrow cases) filing proposed amendments of contentions on issues within the scope of the existing contention. For example, a petitioner may adjust an environmental contention filed on the application to address an NRC environmental document's discussion of the same particular issue, given that the NRC has the ultimate responsibility to comply with environmental laws and (when the NRC environmental document has been issued) the hearing on the issue would concern the adequacy of the NRC environmental document. Similarly, the reopening standards under final § 2.326(e)(1) would not apply to a contention of adequacy arising from new information mooting a contention of omission, where the contention of adequacy remains within the bounds of the bases set forth in support of the original contention. This aligns with well-established scope principles outlined in existing caselaw, such as the McGuire/Catawba proceeding (CLI–02–28, 56 NRC 373). However, reopening would apply to a new or amended contention filed after the record closure date under § 2.326(e)(1) that is not squarely within the confines of a live contention filed before that date (*e.g.,* if the pre-record-closure contention raised a particular environmental qualification concern for a component, a post-record-closure contention would have to meet the reopening standards if it raised a different type of environmental qualification concern for the component).

By providing the public with an opportunity to request a hearing prior to closing the record, this change comports with applicable Federal case law considering challenges to the NRC's reopening standards. In the 1984 decision *Deukmejian* v. *NRC* (751 F.2d 1287), the U.S. Court of Appeals for the D.C. Circuit addressed a challenge to the NRC requiring an intervenor to meet the reopening standards to participate in a proceeding on a *full power* operating license in order to challenge an applicant's application to amend a *low power* license by extending the license term. The court determined the two actions were separate proceedings. By requiring the petitioner to meet the heightened pleading requirements in the reopening standard, the NRC improperly abridged the petitioner's hearing rights under section 189a. of the Atomic Energy Act. Thus, under *Deukmejian,* the NRC must provide petitioners with at least one opportunity to participate in an adjudication prior to closing the record. The revisions to § 2.326 meet this standard because they would not close the record until well after the opportunity to request a hearing expires.

Also, because the revisions to § 2.326 close the record in the specified circumstances, the NRC is revising §§ 2.104, 2.105, and 2.309(b)(5) to require **Federal Register** notices announcing opportunities to request hearings to state the Standard Hearing Completion Date for the proceeding. This will put the public on notice and provide additional clarity on record closure.

Further, to avoid any implication that final § 2.326(e)(1) overrides or otherwise annuls existing case law, the NRC is adding in response to comments a new § 2.326(e)(2) clarifying that, if the presiding officer enters an order closing the record following resolution of all live contentions in the proceeding, the record for the adjudicatory proceeding will close on the date specified in the order.

Finally, in addition to the adjustments described previously to address the scheduling directives of the ADVANCE Act and E.O. 14300, the agency is modifying the criteria included in § 2.326(a)(2) to state that a significant environmental issue under the National Environmental Policy Act can only be identified in a proceeding where a categorical exclusion listed in 10 CFR part 51 does not apply. The final rule language clarifies that categorical exclusions specifically pertain to the agency's obligations under the National Environmental Policy Act. In circumstances where a categorical

exclusion is used to comply with the National Environmental Policy Act, by definition, there are no significant environmental issues associated with the proposed Federal action under that statute. The agency considers this to be a clarity change responsive to the potential for increased use of categorical exclusions in future reviews. In another clarity change, the final rule specifically refers to categorical exclusions listed in 10 CFR part 51 because categorical exclusions in the regulations have issue preclusive effect in NRC proceedings.

Discovery

The NRC is making several changes to reduce burdens to the parties from their obligations to make certain disclosures after contentions are admitted in most licensing proceedings and is also expediting the production of initial disclosures to support the accelerated evidentiary hearing timeframes in subpart L of 10 CFR part 2.[10]

The NRC staff's hearing file obligations are being entirely eliminated by this rule. Experience shows the hearing file currently required by § 2.1203 is burdensome and provides little value to the litigation because it covers the entire application under review instead of focusing on the admitted contentions. Moreover, the hearing file was established before the NRC required electronic filing of applications, regularly posted the entirety of applications and related documents on its website, and developed robust search functions in public-facing ADAMS. To the extent members of the public face difficulties in searching ADAMS, NRC Public Document Room staff are available to assist during business hours. Thus, the rationale supporting the hearing file obligation has become outdated. While the NRC is eliminating the hearing file requirements in § 2.1203, it is retaining paragraph (d) of this section, which specifies that no additional forms of discovery are authorized beyond what is permitted by subpart C of 10 CFR part 2.

In a change from the proposed rule, the NRC is retaining the NRC staff's § 2.336(b) disclosure obligations. While the staff's disclosures largely replicate the applicant's required disclosures or otherwise concern internal documents that are typically not produced to the other parties, there could be cases where the staff would disclose relevant information that would not otherwise be produced.

To effectuate the elimination of the hearing file requirement, the NRC is changing the scope of case-specific orders issued under § 2.307(c) for access to sensitive unclassified information. Under existing Commission precedent, these orders no longer apply to a petitioner if its hearing request is granted, as discussed in a 2010 decision in the South Texas Project combined license proceeding (CLI–10–24; 72 NRC 451, 461–63). That precedent, however, was issued when regulations required the NRC staff to disclose documents unrelated to the admitted contentions. Since the NRC staff would no longer produce a hearing file under § 2.1203, a change is needed so that a petitioner who is admitted as a party could continue to make requests for access under the § 2.307(c) access order on matters outside the scope of disclosures under § 2.336. The NRC intends to revise its templates for § 2.307(c) access orders to reflect this change; no change to the regulations is needed for this purpose.

The NRC is modifying the § 2.336(b) disclosures obligation in proceedings on denials of applications. In these types of proceedings, the staff is required to be a party and is in opposition to the applicant. The NRC is modifying § 2.336(b) to tailor the required document disclosures to the circumstances associated with a proceeding on a denial of an application (*e.g.,* the document categories associated with the application and NRC correspondence with the applicant would not apply because the applicant already would be in possession of this material). Finally, the NRC is making conforming changes to § 2.336(a) to reflect applicant disclosures in a proceeding on a denial of an application.

Second, the NRC is further modifying § 2.336 to reduce the burdens of other participants. Parties commonly agree to exclude from disclosures non-public draft documents that have not been circulated among the parties; the NRC is codifying this practice in the NRC's regulations in new subparagraphs (a)(4) and (b)(2). Moreover, in response to comments, the NRC is adding new subparagraphs (a)(5) and (b)(3) to exclude internal instant messages, text messages, and voice messages from mandatory disclosure absent a showing of exceptional circumstances. This exclusion only applies to communications that are internal to a party, its litigation team, and its contractors; if a single external person or entity is included in a communication, the communication would not be subject to this exclusion. These internal communications are generally high-volume, but low-value, and similar to non-public drafts that reveal a party's internal thinking. Generally, NRC licensing proceedings involve admitted contentions from qualified intervenors and focus on the technical conclusions on safety and environmental issues and how they are supported,[11] rather than on intent or motive that could be revealed through a party's internal thinking. Therefore, the NRC finds it appropriate to focus disclosures on technical documents that will reach the ultimate issues in dispute. However, to avoid inadvertently excluding relevant technical documents merely because they are attached to an excluded internal communication, the NRC is not excluding any documents attached to those excluded internal communications. These attachments would need to be included within the scope of mandatory disclosures if they are relevant to the admitted contentions. Also, in exceptional circumstances, such as when an admitted contention or license denial proceeding relates to a party's intent or motive and these types of internal communications would be relevant to the specific issue in the proceeding, the presiding officer may require that these communications be included.

Under existing rules, the duty to update disclosures relevant to an admitted contention ends when the presiding officer issues a decision resolving the contention. In this final rule, the NRC is also providing that the duty to update ends upon the initiation of the evidentiary hearing phase for the contention as delineated in an order from the presiding officer. This change serves to avoid requiring updates during the evidentiary hearing phase, as the relevant documents should have been disclosed by this point, and the evidentiary hearing is the most resource-intensive phase of the process.[12] Notably, this does not relieve

[10] These changes do not affect the discovery provisions in proceedings under subpart G or subpart J of 10 CFR part 2.

[11] For example, in a 2006 decision in a proceeding on the USEC American Centrifuge Plant (CLI–06–10, 63 NRC 451, 455), the Commission explained that the NRC's adjudicatory hearings serve to ''adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors.''

[12] The NRC has revised this section in the final rule. The proposed rule regulatory text stated at § 2.336(d) that ''The duty to update disclosures relevant to an admitted contention ends when the presiding officer issues a decision resolving the contention or thirty days prior to the start of an evidentiary hearing, whichever occurs first; however, termination of the duty to update disclosure does not relieve parties of their continuing obligation to keep the presiding officer and litigants informed of relevant new developments in a proceeding.'' The proposed rule

litigants from their ongoing general obligation to keep the presiding officer and litigants informed of relevant new developments in a proceeding, as the Commission emphasized in its 2006 decision in the USEC proceeding (CLI–06–10, 63 NRC 451).

Finally, the NRC is revising § 2.336(a) and (b) for added clarity and to require parties to produce their initial disclosures within 20 days of a presiding officer order admitting contested issues into the proceeding when the proceeding is immediately moving to the evidentiary hearing phase under § 2.332(d), while continuing to allow a 30-day period if the proceeding is not immediately moving to the evidentiary hearing phase or for an order granting a demand for hearing upon a denial of an application. Twenty days should be sufficient for diligent litigants to prepare their § 2.336 disclosures given the reduced scope of disclosures and modern discovery and file management tools, including artificial intelligence. Also, an accelerated initial disclosures schedule is necessary to support the expedited evidentiary hearing timeframes that are in the revised subpart L of 10 CFR part 2 when the proceeding is continuing to the evidentiary hearing phase immediately. In proceedings that are not moving immediately to the evidentiary hearing phase, *i.e.,* when the expedited discovery schedule is not needed, the extra 10 days will allow parties additional time to meet their disclosure obligations.

The 20 or 30 days would generally run from the date of an order admitting contentions to account for new or amended contentions that might be admitted after the § 2.309(b) initial filing deadline for contentions. However, in a proceeding on a denial of an application, the 30-day period would run from the order granting a demand for hearing.

Conforming Changes to Scheduling Regulations

To accommodate the shorter timeframes for completing adjudications contemplated by this final rule, the NRC is making a number of conforming amendments to other sections in 10 CFR part 2, which pertain to scheduling. Specifically, the NRC is revising paragraph (b) in § 2.312, ''Notice of hearing,'' to reflect the Commission's expectation that considerations informing the selection of a time and place for a hearing should not override the overall timeframes established for timely adjudications by this rule or by any proceeding-specific Commission order. To provide additional flexibilities that may facilitate meeting those timeframes, the NRC is also revising § 2.329, ''Prehearing conference,'' to give the presiding officer or Commission discretion on whether to hold a prehearing conference.

Next, the NRC is making a number of edits to § 2.332, ''General case scheduling and management,'' to conform to the streamlined procedures and shortened timeframes elsewhere in this rule. Because the timeframes in this rule are mandatory, the NRC is revising paragraph (a) to reflect the presiding officer's obligation to develop a schedule that would meet the licensing timeframes in this rule. Likewise, the NRC is amending paragraph (d) to conform to the Commission's expectations that hearings under subpart L of 10 CFR part 2 would ordinarily begin once the presiding officer admits contentions, not when the staff issues its review documents. Specifically, the presiding officer would immediately proceed to an evidentiary hearing after the admission of a contention unless either (i) the NRC staff or applicant intend to seek dismissal or summary disposition of the admitted contention or (ii) the NRC staff decides to participate as a party but is not yet able to take final positions on the matters in controversy. Section 2.332(d) includes notification requirements to effectuate this provision—the proposed rule required these notifications within seven days of admission of the contention, but to avoid unnecessary delay, this final rule requires the notifications to be filed as soon as possible and no later than seven days after admission of the contention. The commencement of the evidentiary hearing phase would be delayed in cases where the NRC staff or applicant seek to resolve a contention through a motion to dismiss or a motion for summary disposition because the process for seeking dismissal or summary disposition is quicker and less resource-intensive than an evidentiary hearing; thus, the dismissal or summary disposition process may be a more efficient way of resolving a contention if the presiding officer decides that the standards for dismissing the contention are satisfied.[13]

The other reason for delaying the commencement of the evidentiary hearing—when the NRC staff seeks to participate as a party but is not able to take a final position on the matters in controversy—reflects the special role the NRC staff has in the licensing process and the Commission's desire to ensure that the presiding officer is aware of the NRC staff's considered position on the contested issues in those cases where the staff chooses to participate as a party. The NRC staff may not always be in the position (particularly early in its review of an application-specific or first-of-a-kind issue) to take a final position on the matters in controversy (*e.g.,* the NRC staff is seeking further information from the applicant or further considering information already provided). In this regard, the NRC staff is in a different position from the petitioner (who formulated and supported the proposed contention and should be in a position to commence the evidentiary hearing upon admission of the contention) and the applicant (who developed the application and should have the wherewithal to promptly address challenges to it). In the interest of prompt adjudication, revised § 2.332(d) further requires the NRC staff, in cases where it decides to participate as a party but is not yet able to take a final position on the admitted contention, to prioritize its resources to put itself in a position to provide testimony on the contention at the earliest practicable time and notify the presiding officer and the other parties when the staff is ready to do so.

Because the evidentiary hearing phase would, with certain exceptions, immediately commence after admission of a contention, litigants should ensure they are prepared to move immediately to an evidentiary hearing posture if a proposed contention is admitted. Thus, the NRC expects that litigants will consider their potential strategies and resource needs to litigate contentions at an evidentiary hearing before a presiding officer issues its decision on contention admissibility.

Section 2.332(d) is further revised to require the presiding officer, to the greatest extent practicable, to establish a schedule that will not extend past the

regulatory text was ambiguous, as it did not specify when the evidentiary hearing started, and if misinterpreted might not have achieved the stated purpose in the proposed rule preamble, to achieve an efficient and timely adjudication process by not requiring disclosures during the evidentiary hearing phase. The NRC is revising the regulatory text to reconcile the regulatory text with its stated purpose.

[13] The exception for summary disposition has been added to this final rule in response to comments; the proposed rule referred only to motions to dismiss. This change is a modest expansion of the proposed rule provision that is consistent with its stated purpose (91 FR 10462) of providing for contention resolution processes that are ''quicker and less resource-intensive than an evidentiary hearing[.]'' As the proposed rule recognized (91 FR 10464), ''Summary disposition may be a useful tool to avoid the resource expenditures associated with an evidentiary hearing.''

NRC staff's scheduled date for completing its review of the particular application. This provision has the purpose of ensuring timely NRC decision-making when it is practicable to do so and is intended to address both individual NRC reviews that are on a more expedited review schedule as well as the resolution of admitted contentions submitted later during an NRC review. In establishing a schedule under this provision, the presiding officer must ensure, as stated later in this rule, that the process still supports accurate decision-making and the development of a sound record, while giving parties a fair and equal opportunity to make their cases.

As a conforming change, the NRC is revising § 51.104(a) to remove the prohibition, in proceedings where a final environmental impact statement (EIS) has been prepared in connection with a proposed action, on the NRC staff either presenting a position on matters within the scope of the National Environmental Policy Act or offering the final EIS into evidence until the final EIS is made available. There is no statutory basis for this prohibition. Also, delaying the commencement of evidentiary hearings on environmental contentions until a final EIS has been completed, which might occur near the end of the NRC's review period, does not support the timeliness and efficiency goals of the ADVANCE Act and E.O. 14300. With the removal of this prohibition, the operative provisions of § 51.104(a) and (b) would be essentially identical, so the NRC is further consolidating § 51.104(a) and (b) into § 51.104(a) and removing and reserving § 51.104(b).

In another conforming change, the NRC is revising § 2.332(b) to reflect that only enforcement proceedings, not licensing proceedings, would be subject to the model milestones in appendix B to 10 CFR part 2. As discussed later, strict deadlines would be imposed in licensing proceedings rather than model milestones.

Finally, the NRC is amending § 2.334, ''Implementing hearing schedule for proceeding,'' by clarifying paragraph (a) to directly state the presiding officer's obligation to take necessary measures to ensure timely adjudication, by revising paragraph (b) to incorporate the standard in § 2.307(a) for extending a schedule and to incorporate an ''extraordinary circumstances'' standard for extending the deadline for completing an evidentiary hearing under subpart L of part 2, and by revising paragraph (c) to require the presiding officer to notify the Commission of any delays beyond the timeframes established by this rule.

Revisions to Hearing Format in Subpart L of 10 CFR Part 2 and Conforming Changes Elsewhere in Part 2

As explained previously, the NRC is making a number of significant changes to subpart L of 10 CFR part 2 to streamline and accelerate the hearing process for proceedings for the grant, renewal, licensee-initiated amendment, termination, or transfer of licenses or permits subject to 10 CFR parts 30, 32 through 36, 39, 40, 50, 52, 53, 54, 55, 61, 70 and 72. The two most significant changes are (1) to establish strict deadlines for the issuance of initial decisions in most licensing proceedings and (2) to provide greater flexibility to the presiding officer to decide which components of the subpart L hearing process are needed to support the presiding officer's decision-making. The NRC is also making other changes to streamline proceedings and ensure prompt and accurate decision-making, as discussed in the following paragraphs.

The NRC is establishing strict deadlines for the issuance of an initial decision to ensure that adjudicatory proceedings are promptly conducted to support the efficiency goals of the ADVANCE Act and E.O. 14300. These deadlines are tailored to different types of proceedings to account for the varying complexity of different license applications as well as the greater need for expedited decision-making in certain proceedings (*e.g.,* in Expedited Proceedings). These deadlines may only be extended if extraordinary circumstances necessitate a delay.

The NRC is also providing presiding officers greater flexibility in structuring the subpart L of 10 CFR part 2 evidentiary hearing phase because admitted contentions could take a wide variety of forms, and the presiding officer in an individual proceeding is better placed to decide what information is needed for the admitted contentions before it to support accurate decision-making and the development of a sound record, while ensuring that the parties are given a fair and equal opportunity to make their cases (*e.g.,* if one party may file written testimony and a position statement, all other parties would have the same opportunity). The presiding officer would also tailor the hearing schedule to the particular circumstances of a proceeding while complying with requirements for decision-making deadlines.

The specific changes to subpart L of 10 CFR part 2 and conforming changes elsewhere in this part are detailed in the following subsections for clarity and completeness.

A. Changes to Scope Provisions in § 2.1200

The NRC is revising § 2.1200 to reflect the modified scope of subpart L of 10 CFR part 2, as discussed previously in the context of changes to §§ 2.310 and 2.700. As stated before, license transfer proceedings will now be conducted under subpart L, as well as contested proceedings on the grant of licenses to construct and operate uranium enrichment facilities. The NRC is also clarifying § 2.1200 to reflect the existing provision in § 2.310(b) providing that enforcement proceedings may be held under subpart L if all parties agree.

B. Changes to § 2.1202 Regarding the NRC Staff's Authority and Role

The NRC is making several modifications to the provisions in § 2.1202 regarding the NRC staff's authority to take licensing actions and its role in the adjudicatory proceeding. First, the NRC is modifying provisions on the issuance and effectiveness of licensing decisions during the pendency of a hearing. Currently, § 2.1202(a) provides that the NRC staff is expected to promptly issue its approval or denial of the application, or take other appropriate action on the underlying regulatory matter for which a hearing was provided, and that the NRC staff's action is effective upon issuance except for several listed licensing actions. The NRC is revising the list of exceptions in § 2.1202(a) as follows:

- Currently, the listed exceptions include all applications to construct and/or operate a production or utilization facility (including limited work authorizations and combined licenses). However, the pre-effectiveness hearing requirements in AEA section 189a. apply to production and utilization facilities licensed under AEA sections 103 and 104b. (corresponding to facilities under §§ 50.21(b) and 50.22 and 10 CFR part 53) or testing facilities licensed under AEA section104c. (corresponding to a facility under § 50.21(c) that meets the definition of ''testing facility'' in § 50.2). The AEA's pre-effectiveness hearing requirements do not apply to production and utilization facilities licensed under AEA section104a. (*i.e.,* medical therapy facilities under § 50.21(a)) or to production and utilization facilities licensed under AEA section 104c. that are not testing facilities (*i.e.,* non-testing facilities under § 50.21(c)). The NRC is revising § 2.1202(a)(1) to reflect the scope of the AEA's pre-effectiveness

hearing requirements and in recognition of the lower safety significance of medical therapy facilities under § 50.21(a) and non-testing facilities under § 50.21(c).

• The NRC is revising § 2.1202(a)(3) to remove the existing exception for 10 CFR part 52 or 53 manufacturing licenses and put in its place an exception for licenses to construct and operate uranium enrichment facilities. In the 2007 rule adding the exception for manufacturing licenses (72 FR 49352, page 49420, August 28, 2007), the Commission acknowledged that there is no statutory requirement for including an exception for manufacturing licenses, but stated, ''Nonetheless, as a matter of discretion, the NRC has decided to treat manufacturing licenses similar to construction permits in this regard, although the NRC reserves the right to change its practice in the future.'' The NRC is removing the exception for manufacturing licenses because such licenses are not subject to the AEA's pre-effectiveness hearing requirements, a manufacturing license authorizes only the manufacture (not operation) of a facility, and vendors may fabricate major portions of a facility without a manufacturing license so long as those portions do not constitute a production or utilization facility. In these circumstances, there is no substantial reason to delay the issuance and effectiveness of a manufacturing license because of a pending hearing on the license application. The NRC is including an exception for applications for licenses to construct and operate uranium enrichment facilities. Such applications are currently subject to hearings under subpart G of 10 CFR part 2, but the NRC will now conduct contested hearings on these applications under subpart L of 10 CFR part 2. As stated previously, licenses to construct and operate uranium enrichment facilities are subject to a statutory pre-effectiveness hearing requirement, so it is appropriate to include them in the list of exceptions in § 2.1202(a).

The NRC is also modifying § 2.1202(b), regarding the role of the NRC staff in the hearing process, to accelerate the time in which the NRC staff is required to notify the presiding officer and the other parties of whether it will participate as a party in the proceeding, consistent with changes being made to § 2.332(d).

C. Changes to § 2.1203 Regarding Elimination of Hearing File

As discussed previously, the NRC is eliminating the hearing file requirements in paragraphs (a) to (c) of § 2.1203, while retaining the prohibition on additional discovery currently in paragraph (d) of § 2.1203.

D. Changes to § 2.1205 Regarding Summary Disposition

The NRC is making several changes regarding the schedule for summary disposition motions. First, to avoid unduly burdening parties as they undertake evidentiary hearing activities, the NRC is modifying § 2.1205(a) so that summary disposition motions are not permitted later than 30 days before the scheduled date for filing initial written testimony, absent permission from the Commission or presiding officer. Summary disposition may be a useful tool to avoid the resource expenditures associated with an evidentiary hearing, but after evidentiary hearing activities are underway, the filing of summary disposition motions risks distracting parties from their hearing preparations and burdening them unnecessarily.

Second, consistent with other changes in this final rule, the NRC is reducing the time for filing answers to summary disposition motions from 20 days to 15 days after service of the motion. The NRC also is providing a 20-day period from the filing of answers for a decision on the motion. Fifteen days should be sufficient for parties to address the pertinent standards for summary disposition motions, and a 20-day period for decisions is consistent with the overall hearing schedule and other timeframes for decisions in this final rule.

E. Changes to § 2.1206 to § 2.1210 Regarding the Hearing Process and Schedule

Currently, § 2.1206 to § 2.1210 provide the principal requirements for the subpart L evidentiary hearing process and schedule, including prescriptive requirements for which written filings are permitted and when, and whether an oral hearing must be held. For the reasons discussed earlier, the NRC is replacing these detailed requirements with simpler, more flexible, and more informal provisions for most proceedings. However, as reflected in an amended § 2.1206(a)(2), a hearing in a proceeding expressly required by the AEA to be determined on the record after opportunity for an agency hearing (*i.e.,* a proceeding for the grant of a license to construct and operate a uranium enrichment facility) will be required to comply with the APA's formal procedures for ''on the record'' hearings.[14] As explained in the following paragraphs, §§ 2.1206 and 2.1207 are completely revised, while §§ 2.1208 and 2.1209 are removed and reserved, and minor conforming changes are made to § 2.1210.

Under revised § 2.1206(a), the presiding officer would issue a scheduling order that would include the presiding officer's determinations on which written filings are permitted, the schedule for these filings, whether to hold an oral hearing, and the schedule for issuing an initial decision. Motions for cross-examination under § 2.1204 would be permitted (consistent with the existing regulations). Otherwise, the presiding officer would largely have flexibility to decide which written filings the parties would be permitted to make to provide the information necessary to support the presiding officer's decision. These potential written filings, which are listed in § 2.1206(b)(1), are (1) initial testimony, position statements, and supporting exhibits; (2) rebuttal testimony, position statements, and supporting exhibits; (3) motions in limine and motions to strike; (4) written briefing and/or written responses to questions from the presiding officer; (5) proposed questions for the presiding officer to ask the witnesses; and (6) proposed findings of fact and conclusions of law. These listed filings are currently available in a hearing process under subpart L of 10 CFR part 2, but the presiding officer would have flexibility to determine which filings to permit in a particular case. Similarly, the presiding officer would generally have flexibility to determine whether an oral hearing is needed to support the presiding officer's decision—currently, an oral hearing is required unless all parties agree to a hearing based solely on written presentations, but the NRC sees no need to require that an oral hearing be held as a default matter in all proceedings.

The initial decision is the culmination of the evidentiary hearing process, and the NRC is requiring that the scheduling order include the schedule for an initial decision, which must comply with the requirements of §§ 2.332 and (if applicable) 2.1207. As discussed later in this document, the amended § 2.1207

[14] In the final rule, the NRC has modified this provision in § 2.1206(a)(2) and the related provision in § 2.1206(d) to refer to ''a proceeding expressly required by the [AEA] to be determined on the record after opportunity for an agency hearing'' rather than to a proceeding on a license to construct and operate a uranium enrichment facility. Although a proceeding on a license to construct and operate a uranium enrichment facility is the only NRC licensing proceeding subject to the ''on the record'' procedures, the NRC made the change to focus on the underlying statutory requirement, which will also account for any potential future statutory changes without the need for a revision to the regulations.

provides schedule requirements for the issuance of initial decisions in most licensing proceedings.

Revised § 2.1206(b)(2) identifies certain additional flexibilities for the parties and the presiding officer that would apply depending on which written filings are permitted. Historically, written testimony in subpart L proceedings has been submitted in question-and-answer form, but a party would be allowed to submit testimony in affidavit form if the party prefers. Section 2.1206(b)(2) also provides that if statements of position and proposed findings of fact and conclusions of law are both permitted, parties would be allowed to file statements of position in the form of proposed findings and conclusions to facilitate the prompt preparation of proposed findings and conclusions after the hearing. Finally, § 2.1206(b)(2) clarifies the presiding officer's authority to allow oral motions in limine or motions to strike in lieu of (or in addition to) written filings. The amended § 2.1206(b)(2) does not provide an exhaustive list of flexibilities, and the presiding officer retains all authority provided in the pertinent provisions of 10 CFR part 2 to regulate the conduct of the proceeding.

The amended § 2.1206(c) retains requirements in existing subpart L of 10 CFR part 2 regarding the participants' ability to designate and present their own witnesses; the presiding officer's discretion to formulate and ask questions as the presiding officer considers appropriate; the presiding officer's authority to address situations where a witness is unable to appear in an oral hearing; and existing provisions on the propounding of questions by the presiding officer and the submission of proposed questions for the presiding officer to ask the witnesses.

While the presiding officer would ordinarily have great flexibility to structure the evidentiary hearing, for two types of proceedings—a proceeding expressly required by the AEA to be determined on the record after opportunity for an agency hearing (*i.e.,* a proceeding on an application to construct and operate a uranium enrichment facility) and a proceeding on a denial of an application—revised § 2.1206(d) requires (consistent with existing subpart L of 10 CFR part 2) that (1) a transcribed oral hearing be held unless all parties jointly agree to dispense with an oral hearing, and (2) each party be permitted to file written testimony, a position statement, and supporting exhibits; to submit rebuttal evidence and argument; and to file proposed findings of fact and conclusions of law. These elements of an evidentiary hearing are required for a proceeding concerning the grant of a license to construct and operate a uranium enrichment facility to maintain consistency with the requirements for formal ''on the record'' hearings in the APA.[15] The NRC is also retaining these elements of a subpart L hearing for denials of applications because hearings on denials ordinarily arise from a ''demand for hearing'' under § 2.103 or 2.108 that would not typically involve the robust issue development provided in the initial filings under the § 2.309 process.[16]

The NRC is providing scheduling requirements in § 2.1207 for issuance of initial decisions in proceedings under subpart L, with the exception of enforcement proceedings and proceedings on denials of applications.[17] For each type of proceeding, § 2.1207 includes (1) a deadline for initial decisions for contentions, including (as applicable) a shorter deadline for initial decisions on contentions submitted after the Standard Hearing Completion Date, (2) a specification of the Standard Hearing Completion Date for that type of proceeding, and (3) a requirement that extraordinary circumstances are necessary for delays beyond the deadline for initial decision. Deadlines are stated in terms of calendar days from the admission of the contention, assuming that the presiding officer immediately proceeds to an evidentiary hearing in accordance with § 2.332(d), although if this does not occur (*e.g.,* the NRC staff is not yet able to take a final position on the contested issues, the applicant seeks to resolve the admitted contention through a summary disposition motion) the deadline would run from an alternative triggering event established in the scheduling order (*e.g.,* the NRC staff's notification that it is able to take a final position on the contested issues, a presiding officer order denying or partially denying an applicant summary disposition motion).Also, in accordance with changes to § 2.334(c) discussed previously, the presiding officer must provide written notification to the Commission any time during the course of the proceeding when it appears that the issuance of the initial decision will be delayed beyond the time specified in the hearing schedule.

In establishing deadlines, the NRC considered the anticipated complexity of the pertinent application, along with associated NRC review deadlines and goals. More time is given for the Standard Proceeding applications subject to an 18-month standard NRC review schedule, while less time is given for less complex applications. While the complexity of the issues admitted for hearing in a particular proceeding will depend on case-specific factors, more complex applications have the potential for more complex contested issues, which is a factor to be considered in establishing these general evidentiary hearing deadlines in the regulations. However, if a less complex dispute is amenable to a shorter process, the Licensing Board should account for that in its schedule for an individual proceeding.

In some cases, the NRC has not established a standard review schedule shorter than 18 months for a particular application, but the NRC would seek to come to a final decision in substantially less than 18 months, if practical, because the application review is less complicated or of narrower scope (*e.g.,* a 10 CFR part 52 commercial reactor application referencing an issued design certification, which finally resolves most design issues for both the staff review and the adjudicatory proceeding). The deadlines in final § 2.1207 account for these circumstances.

The NRC has also considered different timelines depending on when the contention was submitted. For two reasons, the NRC is generally establishing a shorter deadline for initial decisions on contentions submitted after the Standard Hearing Completion Date. First, an expedited schedule is needed for admitted contentions submitted later in a proceeding to support prompt NRC decision-making consistent with the

[15] The NRC recognizes that an oral hearing may not be required by the APA in all cases. As reflected in 5 U.S.C. 556(d), an agency may, in ''applications for initial licenses . . . , when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form'' even in a formal APA hearing.

[16] The NRC acknowledges that for denials noticed under § 2.108(b), any person whose interest may be affected may file an intervention petition under § 2.309, but the NRC does not anticipate that a hearing on a denial of an application would ordinarily arise through this mechanism. Instead, a hearing on a denial of an application would most likely result from a demand for hearing from the applicant under § 2.103 or 2.108—a demand for hearing is not subject to the requirements of § 2.309.

[17] The NRC is not imposing specific schedules for issuance of initial decisions in subpart L enforcement proceedings and proceedings on denials of application because circumstances are likely to vary in these proceedings. In addition, neither the ADVANCE Act nor E.O. 14300 address schedules for enforcement proceedings. Also, denials of applications would be subject to the general requirement in § 2.332(c) to establish a schedule to expedite the proceeding, and the Commission expects that presiding officers would consider relevant comparable hearing schedules in § 2.1207 in establishing a hearing process and schedule that ensure a prompt and fair proceeding that supports accurate decision-making and development of an adequate record.

direction in the ADVANCE Act and E.O. 14300. As stated previously and discussed in more detail later in the context of table 4, the NRC's general overall goal with these changes has been to establish a process where two non-overlapping hearings could be held within the 18-month and 1-year E.O. 14300 deadlines (one hearing on contentions submitted by the § 2.309(b) deadline—as reflected in the calculation of the Standard Hearing Completion Date—and the second hearing on a new or amended contention submitted after the Standard Hearing Completion Date). Second, consistent with other changes to 10 CFR part 2 in this final rule (in particular, those in § 2.332(d)), the NRC would ordinarily proceed to an evidentiary hearing on contentions submitted earlier in the proceeding as soon as practicable. Thus, hearings on admitted contentions submitted later in the proceeding would be expected to narrowly focus on new information arising later in the review, in contrast to contentions submitted early in the review that might embrace the entire application. To promote clarity, § 2.1207 specifies the Standard Hearing Completion Date for different types of proceedings, based on the new definition of this term in § 2.4, and the Standard Hearing Completion Date for a particular proceeding would be specified in the **Federal Register** notice announcing the hearing opportunity, in accordance with this rule's revisions to §§ 2.104, 2.105, and 2.309. The Standard Hearing Completion Dates in this final rule reflect changes to proposed rule scheduling provisions discussed elsewhere in this notice; also, the NRC has corrected an omission in the proposed rule by including a separate Standard Hearing Completion Date in final § 2.1207(d) for transfer proceedings other than those for a license authorizing operation of a reactor.

Regarding the specific deadlines in § 2.1207, the NRC is establishing in § 2.1207(a) the longest deadline (135 days) for the Standard Proceeding applications (*i.e.,* those that, as described previously, are subject to a 60-day filing period for hearing requests). The NRC determined this 135-day deadline by establishing a reasonable, hypothetical schedule for conducting a formal APA hearing in a Standard Proceeding for a license to construct and operate a uranium enrichment facility. While the presiding officer has flexibility to establish a hearing schedule based on the specific circumstances of a proceeding, the hypothetical schedule that follows in table 3 shows that 135 days is sufficient time to conduct an evidentiary hearing that includes initial and rebuttal testimony and statements of position, an oral hearing, and post-hearing proposed findings of fact and conclusions of law. A shorter deadline (100 days) is provided for hearings on contentions submitted after the Standard Hearing Completion Date, for the reasons given previously and as supported by the hypothetical timeline in table 3. These initial decision deadlines, combined with the associated timetables for initial filings identified in tables 1 and 2, support the ability to resolve contested adjudicatory issues within the NRC's standard 18-month review schedules for these enrichment applications with substantial margin, as shown in table 4.

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Table 3: Hypothetical Timeline for an Evidentiary Hearing in a Standard Proceeding for the Grant of a License to Construct and Operate a Uranium Enrichment Facility

Filing or Action	*Hearing Timeline for Contentions Submitted by the Standard Hearing Completion Date*	*Hearing Timeline for Contentions Submitted After the Standard Hearing Completion Date*
Mandatory Disclosures	20 days from admission of contention	20 days from admission of contention
Initial Testimony & Position Statements	45 days from admission of contention	35 days from admission of contention
Motions for Cross-Examination	7 days from initial testimony	7 days from initial testimony
Rebuttal Testimony & Position Statements (& Answers to Cross-Examination Motions)	14 days from initial testimony	14 days from initial testimony
Parties File Proposed Questions and Board Issues Decision on Cross-Examination	7 days from rebuttal	7 days from rebuttal
Oral Hearing	15 days from rebuttal	10 days from rebuttal
Proposed Transcript Corrections	7 days from the close of the oral hearing	7 days from the close of the oral hearing
Proposed Findings and Conclusions	25 days from close of oral hearing	20 days from close of oral hearing
Board's Initial Decision	60 days from close of oral hearing	40 days from close of oral hearing
Total	135 days if oral hearing lasts 1 day	100 days if oral hearing lasts 1 day

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In the proposed rule, the NRC had proposed shorter evidentiary hearing deadlines for other applications in the Standard Proceeding category, but these deadlines were largely premised on the submission of additional merits information in the initial filings under proposed § 2.309(k). Proposed § 2.309(k) was intended to expedite the evidentiary hearing through the development of additional merits information up front that could be used for the evidentiary hearing and would also enlighten the litigants as to the merits positions of the other parties. Under proposed § 2.309(k), the litigants would generally have been further along in developing their initial testimony and position statements and could have saved additional time and resources by focusing these filings on the merits positions of the other parties. Since this final rule does not adopt the provisions in proposed § 2.309(k), the NRC is adjusting the evidentiary hearing schedules to provide a modest amount of additional time for the parties to prepare their initial testimony and position statements given the absence of information that would have been developed and disclosed under proposed § 2.309(k). Therefore, the NRC is modestly increasing the evidentiary hearing schedules for the other Standard Proceeding applications to account for this change, as discussed in the Comment Response Document. Specifically, the NRC is applying the deadlines discussed previously for formal enrichment proceedings to the completion of evidentiary hearings for other applications in the Standard Proceeding category. Both types of applications are subject to similar NRC review schedules and can involve litigation of more complex nuclear safety issues. While these other Standard Proceeding applications are not subject to the formal APA hearing requirements as a matter of law, any adjustments the NRC might make because of this difference would not be sufficiently large to justify the complexity of a different hearing timeline. The NRC has not developed a hypothetical timeline for the non-enrichment evidentiary hearings because the presiding officer has greater flexibility on how to structure these

proceedings, as they are not subject to the formal APA hearing requirements.

Section 2.1207(b) prescribes initial decision deadlines for Expedited Proceedings where the application references both (i) a categorical exclusion listed in 10 CFR part 51, and (ii) an NRC approval providing finality in the adjudicatory proceeding on design information within the application (including a design certification or a manufacturing license). In such cases, the potential adjudicatory issues should be narrow in scope. For this reason, and to support the expedited review schedules involved, the NRC is establishing a 65-day initial decision deadline.[18] This deadline is 20 days longer than the proposed rule deadline for these proceedings because the proposed rule deadlines were quite short and therefore heavily relied on the acceleration of merits filings in proposed § 2.309(k) to expedite the filing of the parties' initial testimony and position statements. Since this final rule is not adopting proposed § 2.309(k), more time will be needed for the evidentiary hearing, as explained in the Comment Response Document. For contentions submitted by the deadline in § 2.309(b), the NRC could complete the evidentiary hearing in about 5 months from the **Federal Register** notice announcing the hearing opportunity, which would support the NRC's review schedules for applications in Expedited Proceedings.

Section 2.1207(c) establishes initial decision deadlines for operating reactor transfer proceedings and for Expedited Proceedings other than those covered by § 2.1207(b). Operating reactor transfer proceedings are treated more like Expedited Proceedings because (i) transfer proceedings are narrow in scope; (ii) there is a shorter time period for filing contentions in transfer proceedings (20 days from the **Federal Register** notice); (iii) the existing model milestones in appendix B to 10 CFR part 2, already establish an expedited hearing schedule for transfer proceedings; and (iv) operating reactor transfer proceedings are currently subject to an 8-month standard NRC review schedule. Therefore, the NRC is accounting for these characteristics by providing an 80-day initial decision deadline for operating reactor transfer proceedings. The NRC is providing the same 80-day timeframes for Expedited Proceedings under § 2.1207(c) in light of the more focused nature of these applications, while recognizing that there is greater scope for potential contentions in these proceedings compared to Expedited Proceedings under § 2.1207(b). These 80-day deadlines are 20 days longer than the proposed rule deadlines to account for the NRC's decision not to adopt the proposed § 2.309(k) requirements in this final rule.

Finally, while operating reactor transfers are subject to an expedited schedule under § 2.1207(c), consistent with the nature of the review and the NRC's 8-month standard review schedule, other transfer proceedings (including for reactors under construction or in decommissioning) are subject to the scheduling provisions in § 2.1207(d) because the NRC currently has a 12-month standard review schedule for these transfer applications. Also, experience has shown that adjudications for transfers of reactors in decommissioning are somewhat more complex than operating reactor transfers, a circumstance that was not contemplated when the model milestones for license transfer hearings were established.

Section 2.1207(d) establishes initial decision deadlines for other licensing proceedings, *i.e.,* Focused Proceedings and transfer proceedings other than those covered by § 2.1207(c). The initial decision deadlines reflect the NRC's consideration of the need for timeliness and efficiency pursuant to the ADVANCE Act and E.O. 14300, as well as the anticipated potential complexity of adjudication for the identified applications. Deadlines are modestly shorter under § 2.1207(d) than under § 2.1207(a), which addresses the Standard Proceeding applications. Specifically, § 2.1207(d) imposes a 110-day initial decision deadline for contentions submitted by the Standard Hearing Completion Date and a 100-day deadline for contentions submitted thereafter. These deadlines are modestly longer than the proposed rule deadlines (by 10 days) to reflect the NRC's decision not to adopt proposed § 2.309(k), as discussed in the Comment Response Document. As shown later in table 4, these deadlines, combined with the timeframes for initial filings, should generally support NRC decision-making on applications within 12 months of docketing of the application (even when a later hearing is held on new or amended contentions). Many applications under § 2.1207(d), including power reactor license renewal applications, are currently subject to a 12-month standard NRC review schedule. Some of the applications under § 2.1207(d) are currently subject to an 18-month standard NRC review schedule, but the NRC would aim to complete the review of these applications more quickly than 18 months if practical since they would generally be less complex and narrower in scope than other applications subject to an 18-month standard review schedule (*e.g.,* 10 CFR part 52 combined license applications referencing a design certification). In addition, to the extent that new or amended contentions are not at issue because there are no substantial changes to the application during the review, these timelines would potentially support NRC decision-making a little over 7 months after docketing of the application if the NRC staff is able to finish its review in that period. Finally, as stated previously, § 2.332(d) requires presiding officers in their scheduling orders to establish a schedule that, to the greatest extent practicable, will not extend past the NRC staff's scheduled date for completing its review of the particular application.

Tables 4 and 5 present information on how the overall hearing timelines support the NRC's decision-making schedules for different types of applications. Table 4 addresses applications covered by the somewhat longer hearing schedules in § 2.1207(a) and (d), and table 5 addresses the more expedited hearing schedules in § 2.1207(b) and (c). These tables assume that (1) the presiding officer immediately proceeds to an evidentiary hearing when a contention is admitted, which the NRC intends to happen where practicable, and (2) the new or amended contention is submitted one day after the Standard Hearing Completion Date (*i.e.,* one day after the calculated initial decision date for the first hearing). These tables show:

- For the Standard Proceeding applications under § 2.1207(a), there is substantial margin to the 18-month standard NRC review schedule for these applications. This margin accounts for potential delays when the evidentiary hearing phase does not immediately commence after contention admissibility. Also, while the appeals process is not within the scope of the E.O. 14300 deadlines in this final rule, the timelines in table 4 allow time for Commission consideration of appeals within the 18-month standard schedules for applications under § 2.1207(a), even for an appeal taken of an initial decision in an evidentiary hearing held on a new or amended contention submitted one day after the Standard Hearing Completion Date.
- For Expedited Proceedings and operating reactor transfer proceedings

[18] The NRC is not establishing a separate initial decision schedule for contentions submitted after the Standard Hearing Completion Date because the 65-day period is already short.

addressed by § 2.1202(b) and (c), the timeframes support the potential completion of hearings around 5 to 5.5 months after publication of the **Federal Register** notice, which supports the NRC's expedited decision-making goals for these proceedings.

- For Focused Proceedings and transfer proceedings addressed by § 2.1202(d), the timeframes support NRC decision-making in about 12 months from publication of the **Federal Register** notice (or about 11 months, for a transfer application subject to § 2.1202(d)), which supports NRC decision-making for applications subject to a 12-month standard NRC review schedule, as well as some applications subject to an 18-month standard NRC review schedule that the NRC would attempt to complete sooner.

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Table 4: Overall Hearing Timeline for Proceedings under § 2.1207(a) and (d)

Hearing Track	*Contention Admissibility Decision – Days from FRN*	*Initial Decision Deadline – Days from Admission of Contention*	*Standard Hearing Completion Date (SHCD)*	*Contention Admissibility Decision (Contention After SHCD) – Days from Contention*	*Initial Decision Deadline – Days from Admission of New/Amended Contention*	*Sum*	*NRC's Current Standard Review Schedule*[19]
Standard Proceeding 2.1207(a)	127 days	135 days	262 days	47 days	100 days	409 days	18 months
Focused Proceeding 2.1207(d)	107 days	110 days	217 days	47 days	100 days	364 days	12 months for many types of applications, 18 months for some applications (but goal to reach decision sooner)
Transfer Application Under 2.1207(d)	72 days	110 days	182 days	47 days	100 days	329 days	12 months

Table 5: Overall Hearing Timeline for Expedited Proceedings Under § 2.1207(b) and (c)

Hearing Track	*Contention Admissibility Decision – Days from FRN*	*Initial Decision Deadline – Days from Admission of Contention*	*Standard Hearing Completion Date (SHCD)*	*NRC's Current Standard Review Schedule*
Expedited Proceeding with Design Finality and Categorical Exclusion 2.1207(b)	82 days	65 days	147 days	6 months for MUR Amendments, 7 months for TSTF CLIIP Amendments, 9 months for SPU Amendments
Other Expedited Proceedings 2.1207(c)	82 days	80 days	162 days	6 months for MUR Amendments, 7 months for TSTF CLIIP Amendments, 9 months for SPU Amendments
Operating Reactor License Transfer Proceeding 2.1207(c)	72 days	80 days	152 days	8 months

- MUR = Measurement Uncertainty Recapture Uprates
- TSTF CLIIP = NRC-approved Technical Specifications Task Force traveler using the Consolidated Line-Item Improvement Process
- SPU = Stretch Power Uprate
- Table 5 does not show a separate timeline for hearings on new or amended contentions after the SHCD because these are not anticipated to be likely for the proceedings covered by this table.

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With the revisions to §§ 2.1206 and 2.1207, the provisions in existing §§ 2.1208 and 2.1209 are unnecessary and, therefore, §§ 2.1208 and 2.1209 are removed and reserved. Also, minor conforming changes are made to the initial decision provisions of § 2.1210. Namely, the NRC is modifying an internal cross-reference and changing ''an informal hearing'' to ''a hearing'' in § 2.1210(a) to account for subpart L of 10 CFR part 2 covering uranium enrichment proceedings subject to the APA's formal hearing requirements.

F. Change to § 2.1213 Regarding Time To File a Stay Request

As explained earlier in this notice, the NRC is modifying § 2.1213(c) to reduce the time period for filing an answer to a request to stay an NRC staff action from 10 days to 7 days. As explained later in this notice, the NRC is modifying § 2.1213(a) so that the Commission itself will decide on requests to stay NRC staff action on a license transfer application.

[19] The NRC's current standard review schedules for the listed applications are subject to change.

G. Addition of New § 2.1214 Regarding Transfer Proceedings To Reflect the Elimination of Subpart M of 10 CFR Part 2

The NRC is removing and reserving subpart M of 10 CFR part 2 because, as explained previously, the NRC is conducting adjudications on transfer applications under subpart L of 10 CFR part 2 rather than subpart M. However, there are certain provisions for transfer proceedings in subpart M that are distinct to those proceedings and should be retained. Therefore, the NRC is adding a new § 2.1214 in subpart L to incorporate the provisions of existing §§ 2.1301, 2.1302, 2.1305, 2.1315, and 2.1316(b), with minor modifications to reflect the context of subpart L in which these provisions now reside. Also, consistent with changes made elsewhere in this rule, the provision in § 2.1214(d) has been modified in this final rule so that the requirement for the NRC staff to offer the safety evaluation report into evidence applies only if the safety evaluation report is available at the time a hearing is conducted.

H. Elimination of Sections II and III of Appendix B to 10 CFR Part 2

As stated previously, the NRC is including strict deadlines for issuance of initial decisions for most adjudicatory proceedings under subpart L of 10 CFR part 2, while providing presiding officers with the flexibility to tailor hearing schedules within these deadlines. The NRC is also eliminating subpart M of 10 CFR part 2. As a conforming change, the NRC is also eliminating the model milestones for hearings under subpart L and subpart M that are in appendix B to 10 CFR part 2. Thus, sections II and III of appendix B are removed and reserved.

Appeals

As discussed previously, in this final rule, the appeals process occurs outside of the scope of the fixed deadlines outlined in section 5(a) of E.O. 14300 because the appeals process does not itself delay the issuance or effectiveness of a license. Nonetheless, the NRC is promulgating broad changes to its contested hearing process, including revisions associated with appeals, in response to the ADVANCE Act and the general direction to streamline the public hearings process in section 5(j) of E.O.14300. To streamline the overall process, the changes to the appeals process primarily implement shortened timelines. Further, simple structural changes were made in § 2.311 to streamline the requirements and add clarity. These changes involve consolidation of the requirements in the section into paragraph (a), *Types of appeals covered under this section;* paragraph (b), *Timing of appeals and associated filings under this section;* and paragraph (c), *Scope of appeals under this section.* These structural changes primarily involve consolidating existing § 2.311(d) into § 2.311(c) and consolidating existing § 2.311(e) into § 2.311(a), (b), and (c). The following paragraphs discuss the NRC's streamlining of the appeals process.

Specifically, the agency is amending § 2.341(b)(1) to reduce the time for filing a petition for review of an agency decision with the Commission from 25 days to within 20 days after service of a full or partial initial decision by a presiding officer, and within 20 days after service of any other decision or action by a presiding officer with respect to which a petition for review is authorized. Sections 2.311 and 2.341(b)(3) are amended to allow any other party to the proceeding to file an answer supporting or opposing Commission review within 20 days after service of a petition for review and reduce the period of time the petitioning party has to file a 5-page reply brief from 10 days to 7 days. In response to public comments, the page limit count for answers to appeals in § 2.341(b)(3) is adjusted from 25 pages to 30 pages. This adjustment matches the page limit count allowed for petitions for review, promoting equity and consistency in the regulations. The modest reductions in filing times described previously are in keeping with the ADVANCE Act and the direction of E.O. 14300 to streamline processes. For interlocutory appeals under § 2.311(a)(1)–(3), the agency is limiting the time for filing the appeal or petition from 25 days to 20 days, consistent with the other appeals.

For interlocutory appeals under § 2.311(a)(1)–(3) and petitions for interlocutory review under § 2.341(f)(2), the agency makes no procedural distinction between them and other appeals because, in many cases, the complexity of an interlocutory appeal is similar to other appeals. Also, this final rule modifies § 2.311 to add a reply brief opportunity for interlocutory appeals under § 2.311(a)(1)–(3).

The agency is modifying § 2.311(b)(2), which addresses interlocutory appeals of an order under § 2.310 selecting hearing procedures, to require the moving party to file an appeal with the Commission no later than seven days after the order—this should be sufficient time to address the comparatively simple matter of selection of hearing procedures. The NRC similarly allots seven days after service of the appeal for any party to file a brief in opposition. The regulatory language further clarifies that a reply brief in response to a brief in opposition is not permitted.

The proposed rule had proposed changes to § 2.311 to address interlocutory appeals of decisions on contentions submitted by the deadline in § 2.309(b) but separately from the hearing request to account for the proposed rule's bifurcation of standing and contention admissibility. Since the final rule does not adopt the proposed rule's bifurcation scheme, these changes have not been included in the final rule.

Referred Rulings and Certified Questions

In cases where the presiding officer identifies significant and novel legal or policy issues, or where prompt decision by the Commission is necessary to materially advance the orderly disposition of the proceeding, the presiding officer has the discretion to refer its ruling to the Commission or certify a question to the Commission for disposition. To ensure efficiency in this process, the agency is including language in § 2.323(f)(1) clarifying that where practicable, the presiding officer should first rule on the matter in question and then seek Commission input in the form of a referred ruling, rather than certify a question to the Commission without issuing a ruling. This change aims to minimize delays in the proceeding during the pendency of the Commission's review. Section 2.323(g) is adapted to clarify that unless otherwise ordered, the referral of a ruling to the Commission does not stay the proceeding or extend the time for performance of any act.

Reconsideration

To shorten the process for motions for reconsideration in keeping with the streamlining and burden reduction efforts of the ADVANCE Act and E.O. 14300, the agency is changing the period to file a motion in § 2.323(e) from 10 days to 7 days; the period for responses is also reduced from 10 days to 7 days. This change is accompanied by a conforming change to § 2.323(a)(2) clarifying that motions for reconsideration are not subject to the general 10-day timeline for motions. Further changes are also carried forward in § 2.345(a)(1) to reflect a seven-day deadline for filing a petition for reconsideration and a seven-day answer period. Similarly, changes to § 2.341(d) reduce the filing timeline for petitions for reconsideration before the Commission to seven days, with a seven-day answer period.

The agency anticipates these changes will provide clarity for the parties and serve overall efficiency efforts. Also, seven-day filing periods should be sufficient because reconsideration is only warranted when the existing regulatory standard of compelling circumstances applies, such as in cases of a clear, material error that could not be reasonably anticipated.

Stays of Decisions and Application for a Stay

Consistent with the streamlining efforts throughout 10 CFR part 2, the NRC is changing the § 2.342(a) timeline for an application for a stay of the effectiveness of the decision or action pending filing of and a decision on a petition for review; the NRC is reducing the filing deadline from 10 days after service of a decision or action of a presiding officer to 7 days. This change is paired with a revision to § 2.342(d) to clarify that the period for any party to file an answer supporting or opposing the granting of a stay is seven days after service of an application for a stay.

Under existing § 2.1213, any application for a stay of the effectiveness of the NRC staff's action on a matter involved in a hearing must be filed with the presiding officer within seven days of the issuance of the notice of the NRC staff's action under § 2.1202(a). While the agency is not altering this timeline, the agency is reducing the corresponding timeline in § 2.1213(c) for any party or the NRC staff to file an answer supporting or opposing the granting of a stay from 10 days to 7 days after service of an application for a stay of the NRC staff's action.

These modest timeline reductions should not significantly impact the burden on the parties to address the limited requirements and capped length of stay applications and associated answers. Further, these timeline changes are consistent with changes in this rule for similar filings while advancing the directives of the ADVANCE Act and E.O. 14300.

Further, in response to a public comment on the proposed rule, the NRC is amending § 2.1213(a) to clarify that the Commission will make decisions on applications to stay the effectiveness of an NRC staff order in a license transfer proceeding. Rulings on such applications require speed and stability, which may be more readily afforded if the Commission maintains its authority for deciding stay applications during license transfer proceedings.

Delivery of Hard Copy Documents

Under existing § 2.302, litigants must generally utilize the NRC's electronic filing system unless they (1) obtain an exemption from that requirement by demonstrating good cause to use a nonelectronic means of transmission for electronic documents on optical storage media or to file paper documents, or else (2) file without an exemption a document containing electronic portions that may not be transmitted via the E-Filing system for reasons of security or electronic format. In recent years these circumstances have been rare, and the NRC anticipates they will arise even less frequently going forward. When an alternative to electronic transmission is used, however, § 2.306 automatically extends the timeframes in 10 CFR part 2 to account for the additional time it will take for nonelectronic transmission of the document. Collectively, these extensions could considerably delay a proceeding. Therefore, the NRC is amending § 2.306(b) to direct the presiding officer to establish whether, and how long, the timeframes in 10 CFR part 2 should be extended in cases when nonelectronic transmission is allowed. Prior to this presiding officer order, the NRC is retaining the existing extensions of time in § 2.306. In considering the need to extend the timeframes to account for nonelectronic service of documents, the presiding officer should ensure that the extensions will not cumulatively challenge timely completion of the adjudication.

IV. Opportunities for Public Participation

The NRC published the proposed rule on March 3, 2026 (91 FR 10450), and the due date for comments was April 2, 2026. In the proposed rule notice, the NRC sought advice and recommendations from the public on the following specified topics:

Overall Framework
Accelerating the Consideration of the Merits of Proposed Contentions
Specific Hearing Provisions
Discovery
Applicability of Rule Changes

The NRC hosted a public meeting on March 19, 2026, to engage with external stakeholders on the proposed rule during the public comment period. The NRC provided an overview of the proposed rule and answered questions from attendees but did not take comments on the proposed rule at the meeting. A summary of this public meeting is available in ADAMS, as provided in the ''Availability of Documents'' section.

V. Public Comment Analysis

In response to the proposed rule, the NRC received 33 unique comment submissions. The public comment submissions are available from the Federal e-Rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2025–1501 and in ADAMS, as referenced in the ''Availability of Documents'' section. The NRC prepared a document summarizing and responding to the public comments, titled ''NRC Response to Public Comments: Streamlining Contested Adjudications in Licensing Proceedings'' (Comment Response Document), also referenced in the ''Availability of Documents'' section. The Comment Response Document also includes a discussion of how this final rule changed as a result of the public comments.

VI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, as amended, 5 U.S.C. 605(b), the NRC certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies in the context of NRC adjudicatory proceedings concerning nuclear reactors or nuclear materials. Reactor licensees are large organizations that do not fall within the definition of a small business found in section 3 of the Small Business Act, 15 U.S.C. 632, within the small business standards set forth in 13 CFR part 121, ''Small Business Size Regulations,'' or within the size standards established by the NRC (§ 2.810). Some materials licensees are small businesses. Based upon the historically low number of requests for hearings involving materials licensees, it is not expected that this rule will have any significant economic impact on a substantial number of small businesses.

VII. Regulatory Analysis

The NRC has prepared a final regulatory analysis for this rule in accordance with Office of Management and Budget (OMB) Circular A–4. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC has determined that the actions in this rule are expected to reduce regulatory burden and generate cost savings for both the government and hearing participants by streamlining contested hearing proceedings.

As part of the proposed rule, the NRC requested public comment on the draft regulatory analysis, and a few comments were received that were relevant to the regulatory analysis. In response to these comments, the NRC added clarifying text to describe the qualitative assessment of certain impacts. Also, the NRC revised the regulatory analysis to reflect changes made from the proposed

rule to the final rule in response to other comments (*e.g.,* changes eliminating proposed § 2.309(k) and the proposed bifurcation of standing and contention admissibility, changes to exclude certain internal communications from mandatory disclosures). In addition to these comment-related updates, the NRC made an update to the wage rates from 2024 to 2025, the most recent year for which data were available. Taken together, these updates result in revised impact estimates. The final regulatory analysis is detailed in the following paragraphs.

This analysis uses current contested hearing procedures for licensing proceedings under 10 CFR part 2 as the baseline and evaluates the changes in this rule as the regulatory alternative and estimates the final rule's costs and cost savings for the first five years of implementation of the rule.[21] The final rule addresses many different types of applications, from applications to construct or operate reactors, to applications to construct or operate significant materials facilities, to applications for license renewals, amendments, and transfers, as well as applications associated with the proposed restart of reactors in decommissioning. Past experience suggests that, depending on the type of application, there is a greater or lesser probability that a hearing request will be filed or that a hearing request, if granted, will proceed to an evidentiary hearing. For example, previous 10 CFR part 52 early site permit and combined license applications for large reactors were nearly always the subject of a hearing request, while reactor license amendment applications are rarely challenged. Power reactor license renewal applications are often contested. Regarding the likelihood that an evidentiary hearing will be held, of the eight combined license applications for large reactors that were granted, an evidentiary hearing was held on four of these applications. There is a lower rate of holding evidentiary hearings for early site permit and reactor license renewal applications, but contested uranium recovery applications have led to a number of evidentiary hearings in the past 10 years. Past experience is to some degree informative, but any effort to extrapolate from this experience will be subject to substantial uncertainty. In addition, there is uncertainty in predicting how many applications of various types will be submitted or how many will be challenged.

Recognizing this uncertainty, the NRC has attempted to develop numerical estimates for this regulatory analysis. The NRC expects an increase in the number of applications that are the subject of a hearing request because of an expected increase in the number of new reactor applications, up to nine applications per year for the next five years based on pre-application engagements. In addition, 20 power reactor license renewal applications are expected between 2026–2030.[22] Based on this information, the NRC has developed a rough estimate that 15 license proceedings per year will be the subject of a hearing request over the next five years. Based on data from the last 20 years, hearing requests have been granted in 60 percent of the proceedings in which they have been filed, so the NRC estimates that hearing requests will be granted in 9 of these 15 proceedings. Based, in part, on the number of new reactor applications expected and the relative frequency of evidentiary hearings for such applications, the NRC estimates that about 33 percent of the proceedings will lead to an evidentiary hearing (5 evidentiary hearings on average per 15 proceedings with hearing requests).

Resource Projections for Next Five Years Based on Existing Requirements

Combining the previous estimated probabilities for the granting of hearing requests and holding of evidentiary hearings, with the available, albeit limited, internal data on resources expended on NRC hearings, the NRC anticipates that, on average, the NRC staff participating as a party in a contested proceeding would expend 4,150 hours per proceeding on average under the existing requirements—this average accounts for proceedings where hearing requests are denied, those that proceed to an evidentiary hearing, and those where hearing requests are granted but do not proceed to an evidentiary hearing because the admitted contentions are resolved prior to hearing.

The NRC does not possess data on applicant resource expenditures in contested hearings, but the NRC expects an applicant's resources (in terms of hours) to generally be similar to the NRC staff's under the existing rules because the applicant and NRC staff use similar personnel to accomplish similar tasks (answering hearing requests, developing § 2.336 document disclosures, writing testimony, etc.). However, an applicant is not subject to a hearing file requirement like the staff is. Therefore, the NRC projects that applicant resources under existing requirements are 3,925 hours per proceeding in which a hearing request is filed, a bit less than the NRC staff.

The NRC also does not possess data on petitioner resource expenditures in contested hearings. Petitioners vary widely in terms of their level of resources and how many contested issues they raise, but the NRC roughly estimates that, on average, a petitioner would expend about half the applicant's resources (1,975 hours) in a proceeding in which a hearing request is filed.

The NRC would also expend resources for presiding officers to conduct adjudicatory proceedings, where the presiding officer would be a three-member Licensing Board with support staff. In addition, the Office of Commission Appellate Adjudication would draft opinions for Commission consideration that address appeals of presiding officer decisions. In the absence of informative internal data, the NRC estimates (with substantial uncertainty) that there would be 4,700 hours of total NRC adjudicatory decision-making staff resources expended per proceeding in which a hearing request is submitted. This estimate is based on timeframes for adjudicatory decision-making under the existing rules and the following additional assumptions:

- As stated above, the NRC assumes that evidentiary hearings are held in 33 percent of the proceedings in which a hearing request is filed.
- There would likely be one or more rounds of new or amended contentions submitted after a hearing request is filed.
- Presiding officer decisions on an initial hearing request and presiding officer decisions after an evidentiary hearing would likely be appealed, and there may be other petitions for review submitted during a proceeding.
- Given the higher volume of applications expected in the next five years, there would likely be overlap in Licensing Board member service for different proceedings given the longer timeframes in the existing process (*i.e.,*

[21] The NRC staff relied on past or current costs to estimate the future costs of implementation of this final rule. For steps for which the staff has no data, the staff estimated the level of effort based on similar steps in the process or provided a qualitative assessment. In addition, the five-year time horizon was chosen because it allows for a reasonably reliable prediction of the number of proceedings, which is one of the bases of this analysis. Furthermore, the estimates are based on average labor burdens and wage rates; actual outcomes may vary across applicants, NRC staff, and petitioners.

[22] Notices of intent to submit license renewal applications are listed on the NRC's website at *https://www.nrc.gov/reactors/operating/licensing/renewal/subsequent-license-renewal.html* and *https://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.*

over these longer timeframes, a member of one Licensing Board in active litigation would likely serve on multiple other Licensing Boards in active litigation).

Resource Projections for Next Five Years Based on the Final Rule

The final rule makes a number of changes that affect the resources of litigants:

- For the initial filings (hearing requests/contentions, answers, and replies), the final rule accelerates the schedule for filings and decisions thereon, which could save a modest amount of resources. However, participants might compensate for this to some degree by concentrating their resources during the shorter filing and decision periods.
- The final rule saves substantial resources during the intermediate phase, between admission of contentions and the evidentiary hearing. Currently, evidentiary hearings are not held until the staff completes its review. This has led to lengthy intermediate periods where parties periodically update their document disclosures (and for the staff, the hearing file) and engage in other litigation activities. The NRC staff will no longer have to produce a hearing file, and the much shorter intermediate period would limit the disclosure burdens of the other parties, as well as limit burdens from other litigation activities during the intermediate period. Further, this final rule excludes some high-volume, low value internal electronic communications from disclosure, which should alleviate burdens on parties making document disclosures.
- The final rule will also save substantial resources during the evidentiary hearing phase. The existing model milestones in subpart L of 10 CFR part 2 envision an evidentiary hearing phase of about nine months from a triggering event to an initial decision, and in practice the evidentiary hearing phase has on average taken substantially longer than this. Under the final rule, the evidentiary hearing phase will generally be limited to between 2 to 4.5 months, with 3.5 to 4.5 months being the set period for most proceedings. Also, the schedule could only be extended if extraordinary circumstances necessitate a delay. A much shorter evidentiary hearing phase will inherently limit the number of filings and other litigation activities and otherwise limit the resources that can be expended. Nonetheless, these resource savings would only accrue if an evidentiary hearing is held.

Considering these factors together, the NRC estimates that the NRC staff's resource burdens will drop from 4,150 hours to 3,025 hours per proceeding in which a hearing request is filed. Applicants are expected to see a drop in resource burden from 3,925 hours per contested proceeding to 3,025 hours. The NRC staff will see a larger resource savings than the applicant because of the elimination of the staff's hearing file obligations. Finally, the NRC estimates a modest drop in petitioner resource expenditures from 1,975 hours per contested proceeding to about 1,525 hours (about half of the applicant's resource expenditures).

In this final rule, the NRC estimates a greater per-proceeding resources savings for litigants than it estimated in the proposed rule. This difference generally results from two changes from the proposed to final rule. First, in most licensing proceedings, the proposed rule would have required litigants to provide more information on the merits of proposed contentions in their initial filings, which would have increased resource burdens somewhat at the initial filing stage. Accelerating the resolution of contested issues by including more information on the merits in initial filings was intended to bring about a compensating burden reduction for those contentions that are admitted, but this reduction would have been limited to contentions that were admitted and proceeded to an evidentiary hearing (whereas most proposed contentions are not admitted and some admitted contentions are resolved before an evidentiary hearing is held). In total, the proposed rule provision was expected to increase resource burdens on participants to save some time in the overall schedule—this proposal has not been adopted in this final rule. Second, the proposed rule would have accelerated filings and decisions on standing to save some litigant resources associated with the filing of contentions in circumstances where standing is not demonstrated. Estimated resource savings here would have been limited because presiding officers usually find that petitioners demonstrate standing, and a substantial amount of litigant resources would have been expended on litigation of contentions by the time a decision on standing would have been issued. However, the proposal to accelerate the consideration of standing has been eliminated in this final rule for reasons discussed in this notice and in response to comments. Ultimately, eliminating both of these proposed rule provisions results in a modest resource savings for litigants in comparison to the proposed rule.

For NRC adjudicatory decision-making staff, the NRC estimates that the resource burdens in proceedings where a hearing request is filed will drop from 4,700 hours per proceeding to 3,900 hours per proceeding. This estimated resource savings accounts for the following factors:

- Significantly reduced periods for presiding officer decision-making limit the resources that would be employed. For example, currently, there is about a 3.5-month period, on average, between submission of a contention and a ruling thereon. However, under the new final rule, this period is reduced to about 1.5 to 2.5 months. In addition, as stated above, evidentiary hearings take 9 months or longer under existing regulations, while most evidentiary hearings under the new final rule will take about 3.5 to 4.5 months total.
- However, savings from the reduced time periods will be limited by the following factors: (1) presiding officers might compensate for shorter periods to some degree by concentrating their resources during the shorter decision periods, (2) there will less likely be overlap in time spent by Licensing Board members on multiple proceedings in active litigation at the same time because the litigation period for each proceeding will be shorter, leading to less overlap in active litigation, and (3) evidentiary hearings are expected in only 33 percent of proceedings in which a hearing request is submitted, thereby diluting the average savings from a shorter evidentiary hearing period in the per-proceeding average.

In this final rule, the NRC estimates a smaller per-proceeding resources savings for NRC adjudicatory decision-making staff than it estimated in the proposed rule. That is because the final rule does not include the proposed rule's provision on accelerating the consideration of standing, which was assumed to save some resources for adjudicatory decision-making staff on contentions in those cases where the presiding officer concluded that standing was not demonstrated, and because the final rule does not include milestones for Commission decisions on appeal, which was assumed to save resources through reduced periods for adjudicatory decision making.

It is difficult to make accurate predictions regarding these factors, so the estimate of resource savings under the new requirements is subject to uncertainty.

Monetized Projections for Next Five Years Based on Existing and New Requirements

Building on the time-resources analysis discussed above, the NRC monetizes the time spent by the government staff, applicants, and petitioners on proceedings by applying fully loaded hourly wage rates.

- For the government staff, the NRC uses its own internal labor rate of $164 per hour.[23]
- For the applicants, who typically include utilities or corporate entities seeking licenses or related proceedings, the NRC bases the hourly rates on two data sources. For outside legal services, the NRC used the Fitzpatrick Matrix, which serves as a proxy for market rates for attorneys and paralegals doing complex federal litigation in the Washington, DC, area.[24] Since hearing proceedings will involve the use of outside legal counsel, the Fitzpatrick Matrix is used to estimate the hourly cost of attorney and paralegal time. For 2025, the hourly rates for attorneys of varying experience levels ranged from $540 to $933, with a simple average of $793. The matrix also lists a single hourly rate for paralegals of $255. For non-legal labor categories, the NRC used wage data from the Bureau of Labor Statistics (BLS).[25] The estimated BLS mean hourly wage for relevant positions in 2025 are $66.66 for health and safety engineers, $63.13 for compliance officers, $67.26 for nuclear engineers, $67.01 for engineers, all others, and $43.10 for legal support workers. The NRC applied a multiplier of 2.4 to this BLS wage data to arrive at a fully loaded rate (*e.g.,* $159.98 per hour for health and safety engineers);[26] no such adjustment was made to the Fitzpatrick Matrix rates as these already reflect market-based rates. For the purposes of this analysis, the NRC assumes a staffing distribution for applicants of 50 percent for lawyers, 20 percent for nuclear engineers, 15 percent for paralegals, 5 percent for health and safety engineers, 5 percent for engineers, all others, and 5 percent for compliance staff. Applying these percentages to the Fitzpatrick Matrix data and the adjusted BLS data yields a blended applicant rate of about $491 per hour.
- For petitioners, which also include public-interest organizations and community groups, their wage rates are also derived from the two data sources mentioned previously, with a staffing distribution under the existing regulations of 25 percent for lawyers, 20 percent for nuclear engineers, 20 percent for engineers, all others, 20 percent for legal support staff, 10 percent for health and safety engineers, and 5 percent for paralegals. This estimated staffing distribution accounts for the fact that some petitioners under existing regulations employ non-attorneys as representatives (typically, officers of the petitioning non-governmental organization (NGO)) while other petitioners do employ attorneys, although these may be assisted by officers of petitioning NGOs. NGO officers supporting litigation activities are represented by the legal support staff portion of the staffing distribution. Applying fully loaded hourly rates to the BLS wage data only, this yields a blended and weighted petitioner rate of about $312 per hour.

Using these wage rates, the time spent on proceedings is monetized by multiplying the hours per proceeding by the applicable wage rate and then by 15 proceedings annually. If the existing regulations were to remain in place, the applicants will spend about $28.9 million ($3{,}925 \times \$491 \times 15$ proceedings) on proceedings per year, the NRC adjudicatory staff will spend about $11.6 million annually ($4{,}700$ hours $\times$ $\$164 \times 15$), the NRC technical staff and attorneys will spend about $10.2 million annually ($4{,}150$ hours $\times \$164 \times 15$), and petitioners will spend about $9.2 million annually ($1{,}975 \times \$312 \times 15$). The combined spending on anticipated proceedings is about $59.9 million annually, undiscounted, if this rule is not implemented.[27]

With this final rule, the applicants will spend about $22.3 million annually on proceedings ($3{,}025 \times \$491 \times 15$ proceedings), the NRC adjudicatory staff about $9.6 million annually ($3{,}900$ hours $\times \$164 \times 15$), the NRC technical staff and attorneys about $7.4 million annually ($3{,}025$ hours $\times \$164 \times 15$), and petitioners about $7.1 million annually ($1{,}525 \times \$312 \times 15$). The applicants, government, and petitioners will spend about $46.5 million annually, undiscounted, if this rule is implemented.

Cost Savings and Regulatory Accounting Presented in 2025 Base Year Dollars

Over the five-year analysis period (2026–2030), the final rule revisions are projected to yield net savings for the public, the industry, and government. The combined net savings will generate cumulative undiscounted savings of $67.4 million (savings minus costs). Using 2025 as the base year, the net present value (NPV) of these net savings is $61.7 million, discounted at 3 percent, or $55.2 million, discounted at 7 percent. The projected annualized cost savings will be $13.5 million discounted at 3 percent, or $13.5 million discounted at 7 percent.

Because the final rule streamlines existing hearing procedures, the cost of implementing this rule for the hearing participants is expected to be minimal. The NRC does not currently have empirical data to quantify incremental implementation or transition-related effects associated with the accelerated filing schedules and the revised hearing provisions. Consistent with OMB Circular A–4, when impacts cannot be reliably monetized, agencies provide a qualitative assessment. Accordingly, the agency has examined potential implementation and transition effects and determined them to be minimal since the rule streamlines internal agency proceedings without significantly changing the basic adjudicatory framework.

This final rule retains the existing approach to hearing requests by noticing opportunities for hearing after docketing and requiring a demonstration of standing and contention admissibility for a hearing request to be granted. The criteria for standing are unchanged, and the contention admissibility standards have been refined, without being raised. If a hearing request is granted, the agency still generally employs the same types of procedural mechanisms for evidentiary hearings as under the existing rules (*e.g.,* written testimony and position statements, oral hearings, proposed findings of fact and conclusions of law), although the

[23] The NRC incremental labor rate of $164, which is available at *https://www.nrc.gov/about-nrc/regulatory/rulemaking/regulatory-analysis,* differs from those developed under the NRC's license fee recovery program (10 CFR part 170, ''Fees for facilities, materials, import and export licenses, and other regulatory services under the Atomic Energy Act of 1954, as amended''). NRC labor rates for fee recovery purposes are appropriately designed for full-cost recovery of the services rendered and as such include non-incremental costs (*e.g.,* overhead, administrative, and logistical support costs).

[24] U.S. Attorney's Office for the District of Columbia (USAO–DC), Civil Division, The Fitzpatrick Matrix, available at *https://www.justice.gov/usao-dc/media/1395096/dl?inline.* Beginning in 2022, USAO–DC replaced its previous USAO/Laffey Matrix with the Fitzpatrick Matrix. Federal agencies, including the Department of Justice, Federal Trade Commission, and Securities and Exchange Commission, have used the Laffey Matrix, and subsequently the Fitzpatrick Matrix, to estimate attorney fee rates or legal service costs in regulatory analyses or information collection activities.

[25] U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics, National Industry-Specific Occupational Employment and Wage Statistics, May 2025.

[26] The fully loaded wage rates include fringe and indirect management costs.

[27] Totals in aggregated data throughout this regulatory analysis may differ slightly from the sum of individual values because of rounding.

presiding officer will have greater flexibility to determine which procedural mechanisms to use in a particular hearing. Adjudicatory schedules have been significantly changed, which will require greater discipline on the part of participants to meet those schedules, but participants will still face the same basic task of managing time and resources. The NRC also retains other procedural mechanisms, such as motions, summary disposition, standards for reopening the record, discovery, appeals, stay requests, and requests for reconsideration. Participants will have to familiarize themselves with changes to some of these procedural mechanisms (*e.g.,* application of reopening standards after the Standard Hearing Completion Date, exclusions of certain documents from discovery), but the costs of doing so are expected to be minimal.

The regulatory analysis embedded in the **Federal Register** notice for the proposed rule included rulemaking costs for developing the final rule, but these costs have been removed from table 6 in this final rule. The costs associated with developing this final rule have already occurred; they are treated as sunk and are not included in this analysis. These costs sunset at the time the final rule is issued.

Table 6: Total Five-Year Cost and Savings: Government, Applicants, and Petitioners (2025 Dollars)

Attribute	*In Millions ($)*		
	Undiscounted	*3% NPV*	*7% NPV*
Applicants' Savings from Rule	33.1	30.4	27.2
NRC Adjudicatory Staff's Savings from Rule	9.8	9.0	8.1
NRC Technical Staff and Attorneys' Savings from Rule	13.8	12.7	11.3
Petitioners' Savings from Rule	10.5	9.6	8.6
Implementation and Transition Costs	qualitative		
Net Savings:	67.4	61.7	55.2
Annualized Savings:		13.5	13.5

The applicants, accounting for the largest share of cost savings, will save about $33.1 million over 5 years, undiscounted, with an NPV of $30.4 million discounted at 3 percent, or $27.2 million discounted at 7 percent.

Table 7: Total Five-Year Cost Savings: Applicants (2025 Dollars)

Year	*Number of Proceedings*	*Cost of proceedings with existing regulations*	*Cost of proceedings with final rule*	*Cost savings due to the final rule*	*Cost savings 3% NPV ($ millions)*	*Cost savings 7% NPV ($ millions)*
		Undiscounted, in millions ($)				
2026	15	28.9	22.3	6.6	6.4	6.2
2027	15	28.9	22.3	6.6	6.2	5.8
2028	15	28.9	22.3	6.6	6.1	5.4
2029	15	28.9	22.3	6.6	5.9	5.1
2030	15	28.9	22.3	6.6	5.7	4.7
Total	75	144.5	111.4	33.1	30.4	27.2

Additionally, the NRC adjudicatory staff will realize savings of about $9.8 million over 5 years, undiscounted, with an NPV of $9.0 million discounted at 3 percent, or $8.1 million discounted at 7 percent.

Table 8: Total Five-Year Cost Savings: NRC Adjudicatory Staff (2025 Dollars)

Year	*Number of Proceedings*	*Cost of proceedings with existing regulations*	*Cost of proceedings with final rule*	*Cost savings due to the final rule*	*Cost savings 3% NPV ($ millions)*	*Cost savings 7% NPV ($ millions)*
		Undiscounted, in millions ($)				
2026	15	11.6	9.6	2.0	1.9	1.8
2027	15	11.6	9.6	2.0	1.9	1.7
2028	15	11.6	9.6	2.0	1.8	1.6
2029	15	11.6	9.6	2.0	1.7	1.5
2030	15	11.6	9.6	2.0	1.7	1.4
Total	75	57.8	48.0	9.8	9.0	8.1

During the same period, the NRC technical staff and attorneys will save about $13.8 million over 5 years, undiscounted, with an NPV of $12.7 million discounted at 3 percent, or $11.3 million discounted at 7 percent.

Table 9: Total Five-Year Cost Savings: NRC Technical Staff and Attorneys (2025 Dollars)

Year	*Number of Proceedings*	*Cost of proceedings with existing regulations*	*Cost of proceedings with final rule*	*Cost savings due to the final rule*	*Cost savings 3% NPV ($ millions)*	*Cost savings 7% NPV ($ millions)*
		Undiscounted, in millions ($)				
2026	15	10.2	7.4	2.8	2.7	2.6
2027	15	10.2	7.4	2.8	2.6	2.4
2028	15	10.2	7.4	2.8	2.5	2.3
2029	15	10.2	7.4	2.8	2.5	2.1
2030	15	10.2	7.4	2.8	2.4	2.0
Total	75	51.0	37.2	13.8	12.7	11.3

The petitioners' savings total about $10.5 million, undiscounted, with an NPV of $9.6 million discounted at 3 percent, or $8.6 million discounted at 7 percent.

Table 10: Total Five-Year Cost Savings: Petitioners (2025 Dollars)

Year	*Number of Proceedings*	*Cost of proceedings with existing regulations*	*Cost of proceedings with final rule*	*Cost savings due to the final rule*	*Cost savings 3% NPV ($ millions)*	*Cost savings 7% NPV ($ millions)*
		Undiscounted, in millions ($)				
2026	15.0	9.2	7.1	2.1	2.0	2.0
2027	15.0	9.2	7.1	2.1	2.0	1.8
2028	15.0	9.2	7.1	2.1	1.9	1.7
2029	15.0	9.2	7.1	2.1	1.9	1.6
2030	15.0	9.2	7.1	2.1	1.8	1.5
Total	75.0	46.2	35.7	10.5	9.6	8.6

Overall, this final rule is considered to be a deregulatory action and will reduce burden for both the agency and hearing participants by streamlining the hearing process. These deregulatory actions translate into net savings with an NPV of $55.2 million over the five-year analysis horizon, or $13.5 million annually in 2025 dollars at a 7 percent discount rate.

In addition to this analysis, the Office of Information and Regulatory Affairs directs agencies to report results as a perpetual stream (perpetuity) once a rule is implemented. The perpetual stream has annualized savings of about $13.5 million.

VIII. Backfitting and Issue Finality

The NRC has determined that the backfit rule and issue finality provisions do not apply to this rule because the amendments do not involve any provisions that would impose backfits as defined in 10 CFR chapter I and are not inconsistent with any applicable issue finality provision in 10 CFR part 52 or 53. Therefore, a backfit analysis or issue finality assessment is not required for this rule.

IX. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

X. National Environmental Policy Act

This rule involves an amendment to administrative and procedural requirements in 10 CFR part 2, with conforming changes to 10 CFR parts 51, 52, 53, and 54, and thus qualifies as an action for which no environmental review is required under the categorical exclusions set forth in § 51.22(a)(1) and (a)(3). Therefore, neither an EIS nor an environmental assessment has been prepared for this rulemaking.

XI. Paperwork Reduction Act

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995. Existing collections of information for 10 CFR parts 51, 52, 53, and 54 were approved by the Office of Management and Budget, approval numbers 3150–0021, 3150–0151, 3150–0155, and 3150–0274.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

XII. Executive Orders

The following are Executive orders that are related to this final rule:

A. Executive Order 12866: Regulatory Planning and Review (as Amended by Executive Order 14215, Ensuring Accountability for All Agencies)

The Office of Information and Regulatory Affairs has determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866.

B. Executive Order 14154: Unleashing American Energy

The NRC has examined this final rule and has determined that it is consistent with the policies and directives outlined in E.O. 14154.

C. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is a deregulatory action as defined by E.O. 14192. Details on the estimated cost savings of this final rule can be found in Section VII of this document, ''Regulatory Analysis.''

D. Executive Order 14270: Zero-Based Regulatory Budgeting To Unleash American Energy

E.O. 14270, ''Zero-Based Regulatory Budgeting to Unleash American Energy,'' directs the NRC to insert a conditional sunset date into all new or amended NRC regulations provided the regulations are (1) promulgated under the AEA, the Energy Reorganization Act of 1974, as amended (ERA), or the Nuclear Waste Policy Act of 1982, as amended (NWPA); (2) not statutorily required; and (3) not part of the NRC's permitting regime. The NRC determined that the regulatory changes in this final rule are for hearing processes that are required by statute and are part of the NRC's regulatory permitting scheme authorized by the AEA, ERA, or NWPA. Therefore, the NRC views this rulemaking to be outside the scope of E.O. 14270 and did not insert conditional sunset dates for the regulatory changes in this final rule.

XIII. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has found that it does not meet the criteria at 5 U.S.C. 804(2).

XIV. Availability of Guidance

The NRC will not be issuing guidance for this rulemaking because the rulemaking specifies requirements for adjudications, and how these requirements apply would be highly

dependent on the specific claims made by litigants and the specific circumstances associated with these claims.

XV. Severability

This final rule makes changes to the requirements for contested hearings in NRC licensing proceedings. For the reasons described previously and in response to comments, the NRC has determined that its authority to promulgate these changes is well-supported in law and practice and should be upheld in any legal challenge. However, in the event that any portion of this rule is declared invalid, the NRC intends that the remaining portions be severable and continue in effect. Specifically, the NRC has independently considered each of those provisions in this rule, and intends that, if any of the provisions of this rule (or the application thereof to any person or circumstance) is held to be invalid by a court, such invalidity would not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application. For example:

- This rule includes provisions for different types of applications. If the provisions for one type of application are held to be invalid, the provisions for other types of applications should continue in effect since these other provisions are not intertwined with the provisions held to be invalid and were independently considered, with their own supporting basis and analysis.
- This rule provides scheduling provisions for several procedural categories, including hearing requests, intervention petitions, contentions, motions, discovery, petitions for review, interlocutory appeals, requests for interlocutory review, stay requests, requests for reconsideration, and evidentiary hearings. If the schedule requirements for one procedural category are held to be invalid, the schedule requirements for other procedural categories should remain in effect because the schedules for each procedural category are not intertwined and were independently considered, with their own supporting basis and analysis.
- In addition to schedule provisions, the rule includes changes to various procedural categories, including changes to definitions, **Federal Register** notices, contention standards, the reopening standards, discovery requirements, selection of hearing procedures, actions the staff can take during the pendency of a hearing, evidentiary hearings, additional procedures in § 2.1214 for license transfer proceedings, procedures for referred rulings and certified questions, and provisions for computation of time associated with delivery of hard copy documents. If the provisions for one type of procedural category are held to be invalid, the provisions for other types of procedural categories should continue in effect since these other provisions are not intertwined with the provisions held to be invalid and were independently considered, with their own supporting basis and analysis.

In addition, to the extent there are multiple changes in a category, if one of the changes in the category is held to be invalid, the other changes in the category should continue in effect because these changes were independently considered, with their own supporting basis and analysis. Examples include the various definitional changes; the two refinements to the contention admissibility criteria; the different reopening changes (*e.g.,* the § 2.326(a) change, the provisions in each sentence of § 2.326(e)(1), and the change in § 2.326(e)(2)); the various discovery changes (*e.g.,* elimination of subpart L hearing file, limitation on NRC staff's § 2.336 disclosures, exclusion of draft documents from § 2.336 disclosures, exclusion of certain internal communications from § 2.336 disclosures, changes to discovery schedules); the evidentiary hearing procedure changes; and the changes in each paragraph of § 2.1214.

Finally, for all of the matters described in the previous paragraphs, the agency's purpose in making its proceedings timely and efficient would best be effectuated by applying the provisions in this final rule to the maximum practicable extent.

XVI. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

BILLING CODE 7590–01–P

DOCUMENT	ADAMS ACCESSION NO. / WEB LINK / *FEDERAL REGISTER* CITATION / LEGAL PUBLICATION
NRC Response to Public Comments: Streamlining Contested Adjudications in Licensing Proceedings, October 2026	ML26257A563
Public Comments on Proposed Rule (Consolidated)	ML26113A276
Public Meeting Summary – NRC Public Meeting on Streamlining Contested Adjudications in Licensing Proceedings, held March 19, 2026	ML26070A175
Proposed Rule – Streamlining Contested Adjudications in Licensing Proceedings, March 3, 2026	91 FR 10450
Final Rule – Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, August 11, 1989	54 FR 33168
Executive Order 12866, “Regulatory Planning and Review,” October 4, 1993	58 FR 51735

Final Rule – Changes to Adjudicatory Process, January 14, 2004	69 FR 2182
Final Rule – Licenses, Certifications, and Approvals for Nuclear Power Plants, August 28, 2007	72 FR 49352
Final Rule – Amendments to Adjudicatory Process Rules and Related Requirements, August 3, 2012	77 FR 46562
Executive Order 14215, "Ensuring Accountability for All Agencies," February 24, 2025	90 FR 10447
Executive Order 14154, "Unleashing American Energy," January 29, 2025	90 FR 8353
Executive Order 14192, "Unleashing Prosperity Through Deregulation," February 6, 2025	90 FR 9065
Executive Order 14270, "Zero-Based Regulatory Budgeting to Unleash American Energy," April 15, 2025	90 FR 15643
Executive Order 14300, "Ordering the Reform of the Nuclear Regulatory Commission," May 29, 2025	90 FR 22587
Final Rule - Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors, March 30, 2026	91 FR 15696
Final Rule - Increased Flexibility in the Mandatory Hearing Process, April 15, 2026	91 FR 20063
Proposed Rule; guidance; and request for comment - Licensing Requirements for Microreactors and Other Reactors With Comparable Risk Profiles, May 1 2026	91 FR 23628
Policy Statement on Mandatory Hearings for Reactor Licensing, June 8, 2026	91 FR 34661
Memorandum and Order (CLI-92-4), Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), February 26, 1992	35 NRC 69 (ML16357A727)
Memorandum and Order (LBP-01-31), Duke Energy Corporation (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), October 31, 2001	54 NRC 242 (ML030420224)
Memorandum and Order (CLI-02-28), Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), December 18, 2002	56 NRC 373 (ML023520517)
Memorandum and Order (CLI-04-25) Louisiana Energy Services, L.P. (National Enrichment Facility), August 18, 2004	60 NRC 223 (ML060740237)
Memorandum and Order (CLI-06-10), USEC Inc. (American Centrifuge Plant), April 3, 2006	63 NRC 451 (ML081510741)

Memorandum and Order (CLI-06-16), Andrew Siemaszko, June 2, 2006	63 NRC 708 (ML081510741)
Memorandum and Order (CLI-06-17), Nuclear Management Company (Palisades Nuclear Plant), June 23, 2006	63 NRC 727 (ML081510741)
Memorandum and Order (LBP-09-6), U.S. Department of Energy (High-Level Waste Repository), May 11, 2009	69 NRC 367 (ML12202B178)
Memorandum and Order (CLI-10-2), Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2), January 7, 2010	71 NRC 27 (ML13056A621)
Memorandum and Order (CLI-10-24), South Texas Project Nuclear Operating Company (South Texas Project, Units 3 and 4), September 29, 2010	72 NRC 451 (ML12252A385)
Memorandum and Order (CLI-12-3), Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), February 22, 2012	75 NRC 132 (ML14192B367)
Memorandum and Order (CLI-12-14), Virginia Electric and Power Company (North Anna Power Station, Unit 3), June 7, 2012	75 NRC 692 (ML14192B367)
Memorandum and Order (CLI-19-11), Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), December 17, 2019	90 NRC 258 (ML20241A307)
Memorandum and Order (CLI-20-6), Southern Nuclear Operating Company, Inc. (Vogtle Electric Generating Plant, Unit 3), June 15, 2020	91 NRC 225 (ML21168A338)
Memorandum and Order (CLI-20-16), Nuclear Development, LLC (Bellefonte Nuclear Plant, Units 1 and 2), December 17, 2020	92 NRC 511 (ML21280A391)
Order of the Secretary, Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), Nos. 50-250-SLR/50-251-SLR, June 29, 2018	ML18180A185
Order of the Secretary, Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), Nos. 50-250-SLR-2/50-251-SLR-2, November 6, 2023	ML23310A269
Deukmejian v. NRC, D.C. Circuit, December 31, 1984	751 F.2d 1287
National Whistleblower Center v. NRC, D.C. Circuit, April 11, 2000	208 F.3d 256
Citizens Awareness Network, Inc. v. U.S., 1st Circuit, December 10, 2004	391 F.3d 338
Massachusetts v. NRC, 1st Circuit, February 25, 2013	708 F.3d 63

Federal Administrative Adjudication Outside the Administrative Procedure Act, Michael Asimow, 2019	https://www.acus.gov/sites/default/files/documents/Federal%20Administrative%20Adj%20Outside%20the%20APA%20-%20Final.pdf
OMB Circular A-4, "Regulatory Analysis," September 17, 2003.	https://www.whitehouse.gov/wp-content/uploads/2025/08/CircularA-4.pdf
Presidential Memorandum, "Plain Language in Government Writing," June 10, 1998	63 FR 31885

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The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2025–1501. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2025–1501); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information, Environmental protection, Freedom of information, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statements, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Combined license, Early site permit, Emergency planning, Fees, Inspection, Issue finality, Limited work authorization, Manufacturing license, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Penalties, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 53

Administrative practice and procedure, Antitrust, Backfitting, Construction permit, Combined license, Classified information, Criminal penalties, Early site permit, Emergency planning, Fees, Fire prevention, Fire protection, Inspection, Intergovernmental relations, Limited work authorization, Manufacturing license, Nuclear power plants and reactors, Operating license, Penalties, Prototype, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Standard design, Standard design certification, Training programs.

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2, 51, 52, 53, and 54.

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note. Section 2.205(j) also issued under Sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note).

■ 2. In § 2.4:

■ a. Revise paragraph (3) of the definition of ''Contested proceeding'';
■ b. Add definitions for ''Expedited Proceeding'' and ''Focused Proceeding'' in alphabetical order;
■ c. Revise the definition of ''Potential party''; and
■ d. Add definitions for ''Standard Hearing Completion Date'' and ''Standard Proceeding'' in alphabetical order.

The revisions and additions read as follows:

§ 2.4 Definitions.

* * * * *

Contested proceeding * * *

(3) A proceeding in which a hearing request or petition for leave to intervene in opposition to an application for a license or permit:

(i) Has been granted or is pending before the Commission; or

(ii) Is not pending before the Commission but is the subject of a motion for leave to file the hearing request, petition for leave to intervene, or contention after the prescribed filing deadline established in § 2.309(b).

* * * * *

Expedited Proceeding means a proceeding designated in paragraphs (1) through (3) of this definition. A proceeding so designated will be identified as such in the notice providing an opportunity for hearing described in § 2.104 or § 2.105, as applicable.

(1) A licensee-initiated amendment for a measurement uncertainty recapture uprate or stretch power uprate;

(2) A licensee-initiated amendment relying on an NRC-approved Technical Specifications Task Force traveler using the Consolidated Line-Item Improvement Process; or

(3) A proceeding where the application references both a categorical exclusion listed in part 51 of this chapter and an NRC approval providing finality in the adjudicatory proceeding on design information within the application (including a design certification or a manufacturing license).

* * * * *

Focused Proceeding means a proceeding designated in paragraphs (1) and (2) of this definition. A proceeding so designated will be identified as such in the notice providing an opportunity for hearing described in § 2.104 or § 2.105, as applicable.

(1) A proceeding for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to parts 30, 32 through 36, 39, 40, 50, 52, 53, 54, 55, 61, 70, and 72 of this chapter, except for a Standard Proceeding, an Expedited Proceeding, a proceeding subject to subpart J of this part, or a proceeding on a denial of an application.

(2) A Focused Proceeding also includes proceedings on:

(i) An application for a subsequent implementation of a reactor design or technology that references an initial implementation of a reactor design or technology after the initial implementation has been designed, constructed, and operated;

(ii) An application to construct and operate a uranium enrichment facility that relies on technology that has been licensed and operated; and

(iii) An application for a limited work authorization.

* * * * *

Potential party means any person who has requested, or who may intend to request, a hearing or petition to intervene in a hearing under this part, other than hearings conducted under subpart J of this part.

* * * * *

Standard Hearing Completion Date means the date on which an initial decision would be scheduled to issue in accordance with this part where a contention is:

(1) Filed by the deadline in § 2.309(b);

(2) Admitted by the presiding officer in accordance with a due date for decision specified in this part (with the contention, answer, and reply being filed by the deadlines specified in this part); and

(3) Adjudicated at an evidentiary hearing phase that immediately proceeds upon the admission of the contention. The calculated Standard Hearing Completion Dates for different types of proceedings are in § 2.1207.

Standard Proceeding means a proceeding designated in paragraphs (1) through (3) of this definition but does not include a non-power production or utilization facility proceeding, a proceeding on a denial of an application, or a proceeding designated as a Focused Proceeding or an Expedited Proceeding:

(1) The grant of a license to construct and operate a uranium enrichment facility;

(2) The grant of a license to construct, a license to operate, or a license to construct and operate a uranium recovery facility, a facility subject to subpart H of part 70 of this chapter, or a facility under part 61 of this chapter; or

(3) The grant of a construction permit, an operating license, or a combined license for a production or utilization facility of the type described in § 50.21(b) or § 50.22 or subpart H of part 53 of this chapter, as applicable (where the application does not reference an NRC approval providing finality in the adjudicatory proceeding on design information within the application, including a design certification or manufacturing license).

* * * * *

■ 3. In § 2.101, revise paragraph (f)(5) to read as follows:

§ 2.101 Filing of application.

* * * * *

(f) * * *

(5) The Director, Office of Nuclear Material Safety and Safeguards, will cause to be published in the **Federal Register** a notice of docketing which identifies the State and location of the proposed waste disposal facility and will give notice of docketing to the governor of that State and other officials listed in paragraph (f)(3) of this section and will, as soon as practicable after docketing the application, publish in the **Federal Register** a notice under § 2.105 offering an opportunity to request a hearing to the applicant and other potentially affected persons.

■ 4. In § 2.104, revise paragraphs (a) and (b)(4) to read as follows:

§ 2.104 Notice of hearing.

(a) In the case of an application on which a hearing is required by the Act or this chapter, or in which the Commission finds that a hearing is required in the public interest, the Secretary will issue a notice of hearing to be published in the **Federal Register**. The notice must be published at least 15 days, and in the case of an application concerning a limited work authorization, construction permit, early site permit, or combined license for a facility of the type described in § 50.21(b) or § 50.22 or subpart H of part 53 of this chapter, as applicable, or a testing facility, at least 30 days, before the date set for hearing in the notice.[1] In addition, in the case of a notice of hearing announcing an opportunity to request a hearing or petition to intervene, the notice must be published in the **Federal Register** as soon as practicable after the NRC has docketed the application. If the Commission decides, under § 2.101(a)(2), to determine the acceptability of the application based on its technical adequacy as well as completeness, the notice must be issued as soon as practicable after the application has been tendered.

(b) * * *

(4) The date by which requests for hearing and petitions to intervene must be filed; the Standard Hearing Completion Date for the proceeding specified in § 2.1207; and the additional filing deadline information required by § 2.309(b)(5);

* * * * *

[1] If the notice of hearing concerning an application for a limited work authorization, construction permit, early site permit, or combined license for a facility of the type described in § 50.21(b) or § 50.22 or subpart H of part 53 of this chapter, as applicable, or a testing facility, does not specify the time and place of initial hearing, a subsequent notice will be published in the **Federal Register** which will provide at least 30-day notice of the time and place of that hearing. After this notice is given, the presiding officer may reschedule the commencement of the initial hearing for a later date or reconvene a recessed hearing without again providing at least 30-day notice.

■ 5. In § 2.105, revise paragraph (b) introductory text and revise paragraph (d) to read as follows:

§ 2.105 Notice of proposed action.

* * * * *

(b) Except for notices subject to the requirements of § 50.91 or § 53.1515 of this chapter, if a notice of proposed action is published in the **Federal Register**, that notice must be published in the **Federal Register** as soon as practicable after the NRC has docketed the application. A notice of proposed action published in the **Federal Register** (including one subject to the requirements of § 50.91 or § 53.1515 of this chapter) will set forth:

* * * * *

(d) The notice of proposed action will provide that, within the time period provided under § 2.309(b), the applicant may file a request for a hearing; and any person whose interest may be affected by the proceeding may file a request for a hearing or a petition for leave to intervene if a hearing has already been requested. In addition, the notice must state the Standard Hearing Completion Date for the proceeding specified in § 2.1207 and state the additional filing deadline information required by § 2.309(b)(5).

* * * * *

■ 6. In § 2.306 revise paragraph (b) introductory text to read as follows:

§ 2.306 Computation of time.

* * * * *

(b) If the presiding officer grants a request for an exemption from the electronic transmission requirements under § 2.302(h) or anticipates that information subject to § 2.302(g)(2) will not be transmitted electronically, the presiding officer must issue an order specifying whether additional time should be added to prescribed periods for taking action to account for physical delivery of a notice or other document and if so, how much time should be added. In considering the need for additional time to account for physical delivery, the presiding officer should ensure that the added time will not cumulatively challenge timely completion of the adjudication. Prior to the presiding officer issuing such an order, whenever a participant has the right or is required to do some act within a prescribed period after service of a notice or other document upon him or her, no additional time is added to the prescribed period except in the following circumstances:

* * * * *

■ 7. In § 2.309:
■ a. Revise paragraphs (a) and (b)(3);
■ b. Add paragraph (b)(5);
■ c. Revise paragraph (c) heading and paragraphs (c)(1) and (2);
■ d. Add paragraphs (c)(5), (6), and (7);
■ e. Revise paragraphs (f)(1) introductory text, (f)(1)(iv) and (vi), (f)(2), (g), (i), (j) heading, and (j)(1); and
■ f. Add paragraph (j)(3).

The additions and revisions read as follows:

§ 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.

(a) *General requirements.* Any person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

(1) The Commission, presiding officer, or the Atomic Safety and Licensing Board designated to rule on the request for hearing or petition for leave to intervene, will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of paragraph (d) of this section and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section.

(2) In ruling on the request for hearing/petition to intervene submitted by petitioners seeking to intervene in the proceeding on the HLW repository, the Commission, the presiding officer, or the Atomic Safety and Licensing Board shall also consider any failure of the petitioner to participate as a potential party in the pre-license application phase under subpart J of this part in addition to the factors in paragraph (d) of this section.

(3) If a request for hearing or petition to intervene is filed in response to any notice of hearing or opportunity for hearing, the applicant/licensee shall be deemed to be a party.

(b) * * *

(3) In proceedings for which a **Federal Register** notice of agency action is published (other than a proceeding covered by paragraph (b)(1) or (2) of this section), the request or petition and the contentions must be filed within:

(i) Sixty (60) days from the date of publication of the notice in the **Federal Register** in a Standard Proceeding or a proceeding under § 52.103 or § 53.1452 of this chapter.

(ii) Thirty (30) days from the date of publication of notice in the **Federal Register** in an Expedited Proceeding or for a request under § 2.108(b)(2) in a proceeding on a denial of an application under § 2.108; or

(iii) Forty-five (45) days from the date of publication of the notice in the **Federal Register** in a Focused Proceeding.

* * * * *

(5) The **Federal Register** notices referenced in paragraphs (b)(1) through (3) of this section must state the Standard Hearing Completion Date for the proceeding, if specified in § 2.1207, along with the applicable filing deadlines for hearing requests, intervention petitions, and contentions (including those filed after the deadlines in paragraphs (b)(1) through (3) of this section), and the applicable deadlines for the associated answers and replies.

(c) *Filings after the deadline; submission of motion for leave to file hearing request, intervention petition, or new or amended contentions*—(1) *Submission of motion for leave to file and determination by presiding officer.* To submit a hearing request, intervention petition, or new or amended contention after the deadline in paragraph (b) of this section, a participant must submit a motion for leave to file the request, petition, or contention after the deadline, and the request, petition, or contention must accompany the motion for leave to file. Hearing requests, intervention petitions, and new or amended contentions filed after the deadline in paragraph (b) of this section will not be entertained and will not be considered pending before the Commission unless the associated motion for leave to file is granted upon a determination by the presiding officer that a participant has demonstrated good cause by showing that:

(i) The information upon which the hearing request, intervention petition, or contention is based was not previously available;

(ii) The information upon which the hearing request, intervention petition, or contention is based is materially different from information previously available; and

(iii) The motion for leave to file and associated hearing request, intervention petition, or contention have been submitted within thirty (30) days of the availability of the subsequent information, except that the filing period is twenty (20) days from the availability of the subsequent information for license transfer or Expedited Proceedings.

(2) *Applicability of §§ 2.307 and 2.323.* (i) Section 2.307 applies to requests to change a filing deadline (requested before or after that deadline has passed) based on reasons not related to the substance of the filing.

(ii) Section 2.323 does not apply to motions for leave to file hearing requests, intervention petitions, or new or amended contentions filed after the deadline in paragraph (b) of this section.

* * * * *

(5) *Answers and replies.* (i) The applicant/licensee, the NRC staff, and other parties to a proceeding may file an answer to a motion for leave to file and associated hearing request, intervention petition, or contention within 15 days of service of the motion and associated request, petition, or contention. Answers should address, at a minimum, the factors set forth in paragraphs (a) through (h) of this section insofar as these sections apply to the filing that is the subject of the answer.

(ii) Except in a proceeding under § 52.103 or § 53.1452 of this chapter, the participant who filed the motion for leave to file and associated request, petition, or contention may file a reply to any answer. The reply must be filed within 7 days after service of that answer.

(6) *Presiding officer decision.* The presiding officer's decision on a motion for leave to file and associated request, petition, or contention must be issued within 25 days after service of the reply (or within 25 days after the deadline for a reply, if no reply is filed). This deadline may be extended only in accordance with the requirements of paragraph (j)(3) of this section.

(7) *Effect of pendency of motion for leave to file.* The pendency of a motion for leave to file submitted under this paragraph does not affect the NRC's authority to take licensing or regulatory actions.

* * * * *

(f) * * *

(1) Contentions must be set forth with particularity. Each contention must:

* * * * *

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding, including specifying the legal requirement on which the contention is based;

* * * * *

(vi) In a proceeding other than one under § 52.103 or § 53.1452 of this chapter, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. This information also must clearly indicate whether the petitioner is disputing the adequacy of the information in the application, is asserting that the application fails to contain information on a relevant matter as required by law, or both; and

* * * * *

(2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, participants shall file contentions based on the applicant's environmental report. Participants may file new or amended environmental contentions after the deadline in paragraph (b) of this section (*e.g.,* based on a draft or final NRC environmental impact statement, environmental assessment, or any supplements to these documents) if the associated motion for leave to file complies with the requirements in paragraph (c) of this section.

* * * * *

(g) *Selection of hearing procedures.* A request for hearing, petition for leave to intervene, or proposed contentions may, except in a proceeding under § 52.103 or § 53.1452 of this chapter, also address the selection of hearing procedures, taking into account the provisions of § 2.310.

* * * * *

(i) *Answers to hearing requests and intervention petitions filed by the deadline in paragraph (b) of this section; replies to answers.* For a hearing request or intervention petition filed by the deadline in paragraph (b) of this section (or filed by an extension of this deadline that is approved by the Commission, the Secretary, or the presiding officer)—

(1) The applicant/licensee, the NRC staff, and other parties to a proceeding may file an answer to the request or petition. Answers should address, at a minimum, the factors set forth in paragraphs (a) through (h) of this section insofar as these sections apply to the filing that is the subject of the answer. Answers must be filed within the following timeframes:

(i) In a Standard Proceeding or a proceeding under paragraph (b)(2) of this section, or in answer to a request under § 2.108(b)(2) in a proceeding on a denial of an application, the answer must be filed within 25 days after service of the request or petition.

(ii) In a Focused Proceeding, the answer must be filed within 20 days after service of the request or petition.

(iii) In a proceeding under paragraph (b)(1) of this section or an Expedited Proceeding, the answer must be filed within 15 days after service of the request or petition.

(2) The participant who filed the hearing request or intervention petition may file a reply to an answer, except that there is no opportunity to file a reply in a proceeding under § 52.103 or § 53.1452 of this chapter. The reply must be filed within 7 days after service of that answer.

(3) No other written answers or replies will be entertained.

(j) *Decision on request/petition filed by the deadline in paragraph (b) of this section.* (1) Except in a proceeding under § 52.103 or § 53.1452 of this chapter or a proceeding under subpart J of this part, the presiding officer shall issue a decision on a hearing request or intervention petition filed by the deadline in paragraph (b) of this section, within the following timeframes:

(i) In a Standard Proceeding or a Focused Proceeding or for a request under § 2.108(b)(2) in a proceeding on a denial of an application, the decision must be issued within 35 days after service of the reply to the answers to the request or petition (or within 35 days after the deadline for a reply, if no reply is filed).

(ii) In an Expedited Proceeding or a proceeding under paragraph (b)(1) of this section, the decision must be issued within 30 days after service of the reply to the answers to the request or petition (or within 30 days after the deadline for a reply, if no reply is filed).

* * * * *

(3) The decision deadlines in paragraph (j)(1) of this section may be extended only if extraordinary circumstances prevent the presiding officer from issuing a decision by the deadline. At the earliest practicable opportunity, the presiding officer must notify the Commission and the litigants of the delay and the extraordinary circumstances that necessitate the delay.

■ 8. In § 2.310:

■ a. Revise paragraph (a);

■ b. Remove and reserve paragraphs (c) and (d);

■ c. Revise paragraph (e); and

■ d. Remove and reserve paragraphs (g) and (h).

The revisions read as follows:

§ 2.310 Selection of hearing procedures.

* * * * *

(a) Except as determined through the application of paragraphs (b) through (f) of this section, proceedings for the grant, renewal, licensee-initiated amendment, termination, or transfer of licenses or permits subject to parts 30, 32 through 36, 39, 40, 50, 52, 53, 54, 55, 61, 70, and 72 of this chapter must be conducted under the procedures of subpart L of this part.

* * * * *

(e) Proceedings on applications for a license or license amendment to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power plant must be conducted under the procedures of subpart L of this part, unless a party requests that the proceeding be conducted under the procedures of subpart K of this part.

* * * * *

■ 9. Revise § 2.311 to read as follows:

§ 2.311 Interlocutory review of rulings on requests for hearings/petitions to intervene, selection of hearing procedures, and requests by potential parties for access to sensitive unclassified non-safeguards information and safeguards information.

(a) *Types of appeals covered under this section.* An order of the presiding officer, or if a presiding officer has not been designated, of the Chief Administrative Judge, or if he or she is unavailable, of another administrative

judge, or of an administrative law judge with jurisdiction under § 2.318(a), may be appealed to the Commission with respect to:

(1) A request for hearing;

(2) A petition to intervene;

(3) A request for access to sensitive unclassified non-safeguards information (SUNSI), including, but not limited to, proprietary, confidential commercial, and security-related information, and Safeguards Information (SGI). An appeal to the Commission may also be taken from an order of an officer designated to rule on information access issues; or

(4) An order selecting a hearing procedure.

(b) *Timing of appeals and associated filings under this section.* (1) Appeals under paragraphs (a)(1) through (3) of this section must be made as specified by the provisions of this section, within 20 days after the service of the order. The appeal must be initiated by the filing of a notice of appeal and accompanying supporting brief. Any party who opposes the appeal may file a brief in opposition to the appeal within 20 days after service of the appeal. The supporting brief and any answer must conform to the requirements of § 2.341(c)(3). The appellant may file a reply brief within seven (7) days of service of any answer. This reply brief may not be longer than 5 pages.

(2) Appeals under paragraph (a)(4) of this section must be filed with the Commission no later than seven (7) days after issuance of the order selecting a hearing procedure. Any party who opposes the appeal may file a brief in opposition to the appeal within seven (7) days after service of the appeal. No reply briefs will be permitted.

(c) *Scope of appeals under this section.* (1) An order described in paragraphs (a)(1) through (3) of this section is appealable:

(i) By the requestor/petitioner on the question as to whether the request or petition should have been granted.

(ii) By a party other than the requestor/petitioner on the question as to whether the request for hearing or petition to intervene should have been wholly denied; or

(iii) By a party other than the requestor/petitioner on the question as to whether the request for access to the information described in paragraph (a)(3) of this section should have been denied in whole or in part. However, such a question with respect to SGI may only be appealed by the NRC staff, and such a question with respect to SUNSI may be appealed only by the NRC staff or by a party whose interest independent of the proceeding would be harmed by the release of the information.

(iv) No other appeals from rulings on requests for hearing are allowed under this section.

(2) An order described in paragraph (a)(4) of this section may be appealed by any party on the question as to whether the selection of the particular hearing procedures was in clear contravention of the criteria set forth in § 2.310.

■ 10. In § 2.312, revise paragraph (b) to read as follows:

§ 2.312 Notice of hearing.

* * * * *

(b) The time and place of hearing will be fixed in accordance with the scheduling requirements of this part and any proceeding-specific Commission orders. Within these limits, the presiding officer will give due regard for the convenience of the parties or their representatives, the nature of the proceeding, and the public interest.

■ 11. In § 2.313, revise paragraph (a) to read as follows:

§ 2.313 Designation of presiding officer, disqualification, unavailability, and substitution.

(a) *Designation of presiding officer.* The Commission may provide in the notice of hearing that one or more members of the Commission, an administrative law judge, an administrative judge, an Atomic Safety and Licensing Board, or a named officer who has been delegated final authority in the matter, shall be the presiding officer. The Commission alone shall designate the presiding officer in a hearing conducted under subpart O of this part. If the Commission does not designate the presiding officer for a hearing under subpart G, J, K, L, or N of this part, then the Chief Administrative Judge shall issue an order designating an Atomic Safety and Licensing Board appointed under section 191 of the Atomic Energy Act of 1954, as amended, or an administrative law judge appointed by the Commission pursuant to 5 U.S.C. 3105, for a hearing conducted under subpart G, J, K, L, or N of this part.

* * * * *

■ 12. In § 2.323, revise paragraphs (a), (b), (c), (e), (f)(1), and (g) to read as follows:

§ 2.323 Motions.

(a) *Scope and general requirements*—(1) *Applicability to § 2.309(c).* Section 2.309 motions for leave to file hearing requests, intervention petitions, or new or amended contentions after the deadline in § 2.309(b) (including motions to reopen the record that relate to such filings after the deadline) are not subject to the requirements of this section. For the purposes of this section, the term ''all motions'' includes any motion except § 2.309 motions for leave to file hearing requests, intervention petitions, or new or amended contentions after the deadline in § 2.309(b) (and motions to reopen the record that relate to such filings after the deadline).

(2) *Presentation and disposition.* All motions must be addressed to the Commission or other designated presiding officer. All motions, other than motions submitted in Expedited Proceedings as discussed in this paragraph, motions for summary disposition as discussed in § 2.1205, or motions for reconsideration as discussed in paragraph (e) of this section, must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises. Motions submitted in Expedited Proceedings must be made no later than seven (7) days after the occurrence or circumstance from which the motion arises. All written motions must be filed with the Secretary and served on all parties to the proceeding.

(b) *Form and content.* Unless made orally on-the-record during a hearing, or the presiding officer directs otherwise, or under the provisions of subpart N of this part, a motion must be in writing, state with particularity the grounds and the relief sought, be accompanied by any affidavits or other evidence relied on, and, as appropriate, a proposed form of order. A motion must be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion, and that the movant's efforts to resolve the issue(s) have been unsuccessful.

(c) *Answers to motions.* (1) For all written motions, other than motions submitted in Expedited Proceedings, motions for summary disposition, or motions for reconsideration, a party may file an answer in support of or in opposition to the motion within ten (10) days after service of the motion, or other period as determined by the Secretary, the Deputy Secretary, or the presiding officer. Answers to motions in Expedited Proceedings must be submitted within seven (7) days after service of the motion.

(2) An answer to a motion submitted under this paragraph (c) may be accompanied by affidavits or other evidence.

(3) The moving party has no right to reply, except as permitted by the

Secretary, the Deputy Secretary, or the presiding officer. Permission may be granted only in compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments to which it seeks leave to reply.

* * * * *

(e) *Motions for reconsideration.* Motions for reconsideration may not be filed except upon leave of the presiding officer or the Commission, upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid. A motion must be filed within seven (7) days of the action for which reconsideration is requested, and responses to the motion must be submitted within seven (7) days after service of the motion. The motion and any responses to the motion are limited to ten (10) pages.

(f) * * *

(1) If, in the judgment of the presiding officer, the presiding officer's decision raises significant and novel legal or policy issues, or prompt decision by the Commission is necessary to materially advance the orderly disposition of the proceeding, then the presiding officer may promptly refer the ruling to the Commission. This standard also applies to questions certified to the Commission. To minimize delays in the proceeding, to the extent practicable a presiding officer should refer a ruling to the Commission rather than certify a question. The presiding officer shall notify the parties of the referral or certification either by announcement on-the-record or by written notice if the hearing is not in session.

* * * * *

(g) *Effect of the filing of a motion, the filing of a petition, or the referring of a ruling or certifying of a question to the Commission.* Unless otherwise ordered, neither the filing of a motion, the filing of a petition for certification, nor the referral of a ruling or certification of a question to the Commission stays the proceeding or extends the time for the performance of any act.

* * * * *

■ 13. In § 2.326, revise paragraph (a)(2) and add paragraph (e) to read as follows:

§ 2.326 Motions to reopen.

(a) * * *

(2) The motion must address:

(i) A significant safety issue or

(ii) A significant environmental issue, which does not include an issue under the National Environmental Policy Act in proceedings where a categorical exclusion listed in part 51 of this chapter applies; and

* * * * *

(e)(1) For a proceeding subject to § 2.1207, the record for an adjudicatory proceeding will close on the Standard Hearing Completion Date for the proceeding. If before the Standard Hearing Completion Date the presiding officer enters an order closing the record following an evidentiary hearing, the record for the adjudicatory proceeding will close on the date specified in the order. On the date the record closes for an adjudicatory proceeding pursuant to the provisions in this paragraph (e)(1), if there are any other contentions that either remain pending or are subject to a motion for leave to file under § 2.309(c), the record will remain open only with respect to the issues raised by those contentions.

(2) If the presiding officer enters an order closing the record following resolution of all live contentions in the proceeding, the record for the adjudicatory proceeding will close on the date specified in the order.

■ 14. In § 2.329, revise paragraph (a) to read as follows:

§ 2.329 Prehearing conference.

(a) *Option to conduct a prehearing conference.* The Commission or the presiding officer may direct the parties or their counsel to appear at a specified time and place for a conference or conferences before an evidentiary hearing.

* * * * *

■ 15. In § 2.332, revise paragraphs (a), (b), and (d) to read as follows:

§ 2.332 General case scheduling and management.

(a) *Scheduling order.* As soon as practicable (and no later than 10 days) after admitting a contention, the presiding officer shall, after consulting with the parties, enter a scheduling order that establishes time limits for concluding discovery, the schedule for any written or oral components of the evidentiary hearing, and the date when the presiding officer expects to issue an initial decision. For proceedings under subpart L of this part, the scheduling order must comply with the scheduling requirements in subpart L and in paragraph (d) of this section.

(b) *Model milestones.* For enforcement proceedings, in developing the scheduling order under paragraph (a) of this section, the presiding officer shall utilize the applicable model milestones in appendix B to this part as a starting point. The presiding officer shall make appropriate modifications based upon all relevant information, including but not limited to, the number of contentions admitted, the complexity of the issues presented, relevant considerations which a party may bring to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be adjudicated by the parties in the proceeding.

* * * * *

(d) *When to proceed to evidentiary hearing; effect of NRC staff's schedule on scheduling order.* For proceedings subject to the timeframes prescribed by § 2.1207:

(1) As soon as possible and no later than seven days after the admission of a contention:

(i) The NRC staff will notify the presiding officer and the other parties whether the staff will participate as a party on the contention and, if so, whether the staff is able to take final positions on the matters in controversy; and

(ii) The NRC staff and the applicant will notify the presiding officer and the other parties whether the staff or applicant intend to seek dismissal or summary disposition of a contention. The 7-day notification regarding dismissal or summary disposition of a contention must address, as applicable, the NRC staff or applicant's intent to seek dismissal or summary disposition, but the motion to dismiss or motion for summary disposition may be submitted later.

(2) The presiding officer must immediately proceed with the evidentiary hearing phase of the proceeding on an admitted contention unless either:

(i) The NRC staff decides to participate as a party but is not yet able to take final positions on the matters in controversy; or

(ii) The NRC staff or applicant intend to seek dismissal or summary disposition of the admitted contention.

(3) To the greatest extent practicable, the presiding officer should establish a schedule that will not extend past the NRC staff's scheduled date for completing its review of the particular application as documented in a written communication to the applicant.

(4) If the NRC staff decides to participate as a party on an admitted contention but is not yet able to take final positions on the matters in controversy, the NRC staff must prioritize its resources to put itself in a position to provide testimony on the contention at the earliest practicable time and notify the presiding officer and

the other parties when the staff is ready to do so.

■ 16. Revise § 2.334 to read as follows:

§ 2.334 Implementing hearing schedule for proceeding.

(a) The presiding officer must take all appropriate actions to maintain the hearing schedule established in accordance with § 2.332 and other applicable regulations in this part.

(b) A hearing schedule deadline may only be extended upon a finding that the criteria for extending a time limit in § 2.307(a) are met. An applicable deadline in subpart L to this part for completing the evidentiary hearing (*i.e.,* the deadline for issuance of an initial decision) may only be extended upon a finding that extraordinary circumstances necessitate the delay.

(c) The presiding officer must provide written notification to the Commission any time during the course of the proceeding when it appears that the issuance of the initial decision will be delayed beyond the time specified in the hearing schedule established under § 2.332(a). The notification must include an explanation of the reasons for the projected delay and a description of the actions, if any, that the presiding officer proposes to take to avoid or mitigate the delay.

■ 17. In § 2.336:

■ a. Revise paragraph (a) introductory text;

■ b. Add paragraphs (a)(4), (5), and (6); and

■ c. Revise paragraph (b) and the last sentence in paragraph (d).

The additions and revisions read as follows:

§ 2.336 General discovery.

(a) Except for proceedings conducted under subparts G and J of this part (or as otherwise ordered by the Commission, the presiding officer, or the Atomic Safety and Licensing Board assigned to the proceeding) all parties, other than the NRC staff, to any proceeding subject to this part must make the disclosures listed in paragraphs (a)(1) through (3) of this section. For proceedings immediately moving to the evidentiary hearing phase under § 2.332(d), these parties will have twenty days (20) after the issuance of the order admitting a contention to make the required disclosures. Otherwise, these parties will have thirty (30) days after the order admitting a contention or granting a demand for hearing to make the required disclosures. These parties must disclose and provide:

* * * * *

(4) The disclosure obligations in this paragraph (a) do not include drafts of documents unless the draft has been circulated among the parties or publicly disclosed.

(5) The disclosure obligations in this paragraph (a) do not include internal text messages, instant messages, and voice messages absent a showing of exceptional circumstances. Internal here means internal to a party, its litigation team, and contractors. Attachments on text messaging or instant messaging platforms are not subject to this exclusion and would need to be assessed for disclosure under paragraphs (a)(1) and (2) of this section.

(6) In complying with the requirements of this paragraph (a) in a proceeding on a denial of an application in response to a demand for hearing, references to ''contentions'' and ''admitted contentions'' must be taken to mean the contested issues outlined in the order granting the demand for hearing.

(b)(1) Except for proceedings conducted under subparts G and J of this part (or as otherwise ordered by the Commission, the presiding officer, or the Atomic Safety and Licensing Board assigned to the proceeding), the NRC staff must, without further order or request from any party, disclose or provide to the extent available (but excluding those documents for which there is a claim of privilege or protected status) the items listed in paragraphs (b)(1)(i) through (v) of this section. For proceedings immediately moving to the evidentiary hearing phase under § 2.332(d), the NRC staff will have twenty days (20) after the issuance of the order admitting a contention to make the required disclosures. Otherwise, the NRC staff will have thirty (30) days after the order admitting a contention or granting a demand for hearing to make the required disclosures.

(i) The application (if applicable) and applicant or licensee requests that are relevant to the admitted contentions and are associated with the application or proposed action that is the subject of the proceeding;

(ii) NRC correspondence with the applicant or licensee that is relevant to the admitted contentions and associated with the application or proposed action that is the subject of the proceeding;

(iii) All documents (including documents that provide support for, or opposition to, the application or proposed action) that both support the NRC staff's review of the application that is the subject of the proceeding and are relevant to the admitted contentions;

(iv) Any NRC staff documents that both represent the NRC staff's determination on the application or proposal that is the subject of the proceeding and are relevant to the admitted contentions; and

(v) A list of all otherwise-discoverable documents for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.

(2) The disclosure obligations in this paragraph do not include drafts of documents unless the draft has been circulated among the parties or publicly disclosed.

(3) The disclosure obligations in this paragraph do not include internal text messages, instant messages, and voice messages absent a showing of exceptional circumstances. Internal here means internal to the NRC staff, its litigation team, and contractors. Attachments on text messaging or instant messaging platforms are not subject to this exclusion and would need to be assessed for disclosure under paragraph (b)(1) of this section.

(4) Paragraphs (b)(1)(i) and (ii) of this section do not apply to a proceeding on a denial of an application in response to a demand for hearing. In complying with the requirements of this paragraph (b) in a proceeding on a denial of an application in response to a demand for hearing, references to ''admitted contentions'' must be taken to mean the contested issues outlined in the order granting the demand for hearing.

* * * * *

(d) * * * The duty to update disclosures relevant to an admitted contention ends when the presiding officer issues a decision resolving the contention or upon the initiation of the evidentiary hearing phase for the contention as delineated in an order from the presiding officer, whichever occurs first; however, termination of the duty to update disclosure does not relieve parties of their continuing obligation to keep the presiding officer and litigants informed of relevant new developments in a proceeding.

* * * * *

■ 18. In § 2.340, revise paragraphs (i)(2), (j)(4), and (k)(2) to read as follows:

§ 2.340 Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses.

* * * * *

(i) * * *

(2) Notwithstanding the pendency of a motion for leave to file under § 2.309(c), a petition for reconsideration

under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

(j) * * *

(4) Notwithstanding the pendency of a motion for leave to file under § 2.309(c), a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

(k) * * *

(2) Notwithstanding the pendency of a motion for leave to file under § 2.309(c), a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

■ 19. In § 2.341, revise paragraphs (b)(1) and (3) and (d) to read as follows:

§ 2.341 Review of decisions and actions of a presiding officer.

* * * * *

(b)(1) Within 20 days after service of a full or partial initial decision by a presiding officer, and within 20 days after service of any other decision or action by a presiding officer with respect to which a petition for review is authorized by this part, a party may file a petition for review with the Commission on the grounds specified in paragraph (b)(4) of this section. Unless otherwise authorized by law, a party to an NRC proceeding must file a petition for Commission review before seeking judicial review of an agency action.

* * * * *

(3) Any other party to the proceeding may, within 20 days after service of a petition for review, file an answer supporting or opposing Commission review. This answer may not be longer than 30 pages and should concisely address the matters in paragraph (b)(2) of this section to the extent appropriate. The petitioning party may file a reply brief within seven (7) days of service of any answer. This reply brief may not be longer than 5 pages.

* * * * *

(d) Petitions for reconsideration of Commission decisions granting or denying review in whole or in part will not be entertained. A petition for reconsideration of a Commission decision after review may be filed within seven (7) days, but is not necessary for exhaustion of administrative remedies. However, if a petition for reconsideration is filed, the Commission decision is not final until the petition is decided. Any petition for reconsideration will be evaluated against the standard in § 2.323(e). Answers to a petition for reconsideration may be filed by an interested party within seven (7) days of service of the petition, and no reply to an answer is permitted.

* * * * *

■ 20. In § 2.342, revise paragraphs (a) and (d) to read as follows:

§ 2.342 Stays of decisions.

(a) Within seven (7) days after service of a decision or action of a presiding officer, any party to the proceeding may file an application for a stay of the effectiveness of the decision or action pending filing of and a decision on a petition for review. This application may be filed with the Commission or the presiding officer, but not both at the same time.

* * * * *

(d) Within seven (7) days after service of an application for a stay under this section, any party may file an answer supporting or opposing the granting of a stay. This answer may not be longer than ten (10) pages, exclusive of affidavits, and should concisely address the matters in paragraph (b) of this section to the extent appropriate. Further replies to answers will not be entertained. Filing of and service of an answer on the other parties must be by the same method, *e.g.,* electronic or facsimile transmission, mail, as the method for filing the application for the stay.

* * * * *

■ 21. In § 2.345, revise paragraphs (a)(1) and (b) to read as follows:

§ 2.345 Petition for reconsideration.

(a)(1) Any petition for reconsideration of a final decision must be filed by a party within seven (7) days after the date of the decision.

* * * * *

(b) A petition for reconsideration must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid. The petition must state the relief sought. Within seven (7) days after a petition for reconsideration has been served, any other party may file an answer in opposition to or in support of the petition.

* * * * *

§ 2.346 [Amended]

■ 22. In § 2.346, in the introductory text and paragraph (c), remove the term ''Assistant Secretary'' and add in its place the term ''Deputy Secretary''.

■ 23. Revise § 2.700 to read as follows:

§ 2.700 Scope of this subpart.

The provisions of this subpart apply to and supplement the provisions set forth in subpart C of this part with respect to enforcement proceedings initiated under subpart B of this part unless otherwise agreed to by the parties, proceedings for initial applications for construction authorization for high-level radioactive waste repository noticed under § 2.101(f)(8) or 2.105(a)(5), proceedings for initial applications for a license to receive and possess high-level radioactive waste at a geologic repository operations area, and any other proceeding as ordered by the Commission. If there is any conflict between the provisions of this subpart and those set forth in subpart C of this part, the provisions of this subpart control.

§ 2.808 [Amended]

■ 24. In § 2.808, in the introductory text and in paragraph (c), remove the term ''Assistant Secretary'' and add in its place the term ''Deputy Secretary''.

■ 25. Revise § 2.901 to read as follows:

§ 2.901 Scope of this subpart.

This subpart applies, as applicable, to all proceedings under subparts G, J, K, L, and N of this part.

■ 26. Revise § 2.1103 to read as follows:

§ 2.1103 Scope of this subpart.

(a) Except as otherwise provided by paragraph (b) of this section, the provisions of this subpart, together with subpart C of this part and applicable provisions of subparts G and L of this part, govern adjudicatory proceedings on the following applications filed after January 7, 1983, if a party requests that the proceeding be conducted under this subpart:

(1) An application for a license or license amendment under part 50, 52, or 53 of this chapter, to expand the spent fuel storage capacity at the site of a civilian nuclear power plant, through the use of high density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means; or

(2) An application for a license under part 72 of this chapter to store spent nuclear fuel in an independent spent fuel storage installation located at the site of a civilian nuclear power reactor.

(b) This subpart shall not apply to the first application for a license or license amendment to expand the spent fuel storage capacity at a particular site

through the use of a new technology not previously approved by the Commission for use at any other nuclear power plant. This subpart shall not apply to proceedings on applications for transfer of a license issued under part 72 of this chapter.

■ 27. Revise § 2.1200 as follows:

§ 2.1200 Scope of this subpart.

The provisions of this subpart, together with subpart C of this part, govern all adjudicatory proceedings conducted for the grant, renewal, licensee-initiated amendment, termination, or transfer of licenses or permits subject to parts 30, 32 through 36, 39, 40, 50, 52, 53, 54, 55, 61, 70, and 72 of this chapter (except as otherwise provided in accordance with § 2.310), and adjudicatory proceedings on enforcement actions conducted under this subpart in accordance with § 2.310.

■ 28. In § 2.1202, revise paragraphs (a)(1) and (3) and (b)(2) to read as follows:

§ 2.1202 Authority and role of NRC staff.

(a) * * *

(1) An application to construct or operate a production or utilization facility of the type described in § 50.21(b) or § 50.22 or subpart H of part 53 of this chapter or a testing facility as defined in § 50.2 of this chapter (including an application for a limited work authorization under § 50.10 or § 53.1130 of this chapter, or an application for a combined license under subpart C of part 52 or subpart H of part 53 of this chapter);

* * * * *

(3) An application for a license to construct and operate a uranium enrichment facility;

* * * * *

(b) * * *

(2) As soon as possible and no later than seven (7) days after the issuance of the order granting requests for hearing/petitions to intervene or admitting contentions, the NRC staff shall notify the presiding officer and the parties whether it desires to participate as a party, and identify the contentions on which it wishes to participate as a party. If the NRC staff desires to be a party thereafter, the NRC staff shall notify the presiding officer and the parties, identify the contentions on which it wishes to participate as a party, and make the disclosures required by § 2.336(b)(1)(iii) through (v) unless accompanied by an affidavit explaining why the disclosures cannot be provided to the parties with the notice.

* * * * *

■ 29. Revise § 2.1203 to read as follows:

§ 2.1203 Prohibition on discovery.

Except as otherwise permitted by subpart C of this part, a party may not seek discovery from any other party or the NRC or its personnel, whether by document production, deposition, interrogatories, or otherwise.

■ 30. Revise § 2.1205 to read as follows:

§ 2.1205 Summary disposition.

(a) Unless the presiding officer or the Commission directs otherwise, motions for summary disposition may be submitted to the presiding officer by any party no later than 30 days before the scheduled date for the filing of initial written testimony. The motions must be in writing and must include a written explanation of the basis of the motion. The moving party must attach a short and concise statement of material facts for which the moving party contends that there is no genuine issue to be heard. Motions for summary disposition must be served on the parties and the Secretary at the same time that they are submitted to the presiding officer.

(b) Any other party may serve an answer supporting or opposing the motion within fifteen (15) days after service of the motion.

(c) The presiding officer shall issue a determination on each motion for summary disposition no later than twenty (20) days after the filing of answers. In ruling on motions for summary disposition, the presiding officer shall apply the standards for summary disposition set forth in subpart G of this part.

■ 31. Revise § 2.1206 to read as follows:

§ 2.1206 Process and schedule for hearing.

(a)(1) Upon consideration of the contested matters raised in the admitted contention(s) and after consulting with the parties, the presiding officer must issue a scheduling order in accordance with § 2.332 that determines which written filings in paragraph (b)(1) of this section the parties will be permitted to make and the schedule for these filings, the schedule for motions for cross-examination, whether and when to hold an oral hearing, and the schedule for issuing an initial decision. The schedule for issuing an initial decision must comply with the requirements of § 2.332 and (as applicable) § 2.1207. If the presiding officer initially determines to hold an oral hearing but later determines an oral hearing is unnecessary, the presiding officer may amend the scheduling order to remove the oral hearing and should inform the parties at the earliest practical opportunity.

(2) The procedures in the Administrative Procedure Act for ''on the record'' hearings apply to a proceeding expressly required by the Act to be determined on the record after opportunity for an agency hearing.

(b)(1) The presiding officer will determine which of the following written filings may be submitted by the parties and the schedule for these filings:

(i) Initial testimony, position statements, and supporting exhibits;

(ii) Rebuttal testimony, position statements, and supporting exhibits;

(iii) Motions in limine and motions to strike;

(iv) Written briefing or written responses to questions from the presiding officer;

(v) Proposed questions for the presiding officer to ask the witnesses; and (vi) Proposed findings of fact and conclusions of law.

(2) Written testimony may be submitted in affidavit or question-and-answer form. If statements of position and proposed findings of fact and conclusions of law are both permitted, then the statements of position may be filed in the form of proposed findings of fact and conclusions of law. Proposed questions need not be filed with any other party. The presiding officer may allow oral motions in limine or motions to strike in lieu of (or in addition to) written filings.

(c)(1) Participants may designate and present their own witnesses to the presiding officer. Testimony for the NRC staff will be presented only by persons designated by the Executive Director for Operations or his or her designee for that purpose.

(2) The presiding officer may formulate and ask oral or written questions to the participants that the presiding officer considers appropriate to develop an adequate record.

(3) The presiding officer may accept written testimony from a person unable to appear at an oral hearing, and may request that person to respond in writing to questions.

(4) Unless cross-examination is permitted in accordance with § 2.1204, only the presiding officer will be permitted to pose questions to witnesses. If the presiding officer permits the parties to submit proposed questions under paragraph (b) of this section, the proposed questions may be propounded at the discretion of the presiding officer. All questions must be kept by the presiding officer in confidence until they are either propounded by the presiding officer, or until issuance of the initial decision on the issue being litigated. The presiding

officer shall then provide all proposed questions to the Commission's Secretary for inclusion in the official record of the proceeding.

(d) In a proceeding expressly required by the Act to be determined on the record after opportunity for an agency hearing and in a proceeding on a denial of an application:

(1) A transcribed oral hearing must be held unless all parties jointly agree to dispense with an oral hearing; and

(2) Each party must be permitted:

(i) To file written testimony, a position statement, and supporting exhibits;

(ii) To submit rebuttal evidence and argument; and

(iii) To file proposed findings of fact and conclusions of law.

■ 32. Revise § 2.1207 to read as follows:

§ 2.1207 Schedule for issuance of initial decision.

With the exception of enforcement proceedings and proceedings on denials of applications, the initial decision must be issued within the applicable timeframe prescribed by paragraphs (a) through (d) of this section.

(a) In a Standard Proceeding, the initial decision must be issued within the following timeframes, except to the extent that extraordinary circumstances necessitate a delay.

(1) For hearing requests, intervention petitions, and contentions submitted by the Standard Hearing Completion Date, the initial decision must be issued within 135 days of:

(i) The admission of the contention if the presiding officer immediately proceeds to the evidentiary hearing phase in accordance with § 2.332(d); or

(ii) Otherwise, the triggering event for the evidentiary hearing as determined in the presiding officer's scheduling order issued in accordance with § 2.332.

(2) For hearing requests, intervention petitions, and contentions submitted after the Standard Hearing Completion Date, the initial decision must be issued within 100 days of:

(i) The admission of the contention if the presiding officer immediately proceeds to the evidentiary hearing phase in accordance with § 2.332(d); or

(ii) Otherwise, the triggering event for the evidentiary hearing as determined in the presiding officer's scheduling order issued in accordance with § 2.332.

(3) The Standard Hearing Completion Date in a proceeding under this paragraph (a) is 262 days after the **Federal Register** notice announcing the opportunity to request a hearing.

(b) In an Expedited Proceeding where the application references both a categorical exclusion listed in part 51 of this chapter and an NRC approval providing finality in the adjudicatory proceeding on design information within the application (including a design certification or a manufacturing license), the initial decision must be issued within the following timeframes, except to the extent that extraordinary circumstances necessitate a delay.

(1) The initial decision must be issued within 65 days of:

(i) The admission of the contention if the presiding officer immediately proceeds to the evidentiary hearing phase in accordance with § 2.332(d); or

(ii) Otherwise, the triggering event for the evidentiary hearing as determined in the presiding officer's scheduling order issued in accordance with § 2.332.

(2) The Standard Hearing Completion Date in a proceeding under this paragraph (b) is 147 days after the **Federal Register** notice announcing the opportunity to request a hearing.

(c) In an Expedited Proceeding other than one under paragraph (b) of this section or in a proceeding for the direct or indirect transfer of control of an NRC license authorizing reactor operation when the transfer requires prior approval of the NRC under the Commission's regulations, governing statute, or pursuant to a license condition, the initial decision must be issued within the following timeframes, except to the extent that extraordinary circumstances necessitate a delay.

(1) The initial decision must be issued within 80 days of:

(i) The admission of the contention if the presiding officer immediately proceeds to the evidentiary hearing phase in accordance with § 2.332(d); or

(ii) Otherwise, the triggering event for the evidentiary hearing as determined in the presiding officer's scheduling order issued in accordance with § 2.332.

(2) The Standard Hearing Completion Date in an Expedited Proceeding under this paragraph (c) is 162 days after the **Federal Register** notice announcing the opportunity to request a hearing. The Standard Hearing Completion Date in a transfer proceeding under this paragraph (c) is 152 days after the **Federal Register** notice announcing the opportunity to request a hearing.

(d) In a Focused Proceeding and in a transfer proceeding other than one described in paragraph (c) of this section, the initial decision must be issued within the following timeframes, except to the extent that extraordinary circumstances necessitate a delay.

(1) For contentions submitted by the Standard Hearing Completion Date, the initial decision must be issued within 110 days of:

(i) The admission of the contention if the presiding officer immediately proceeds to the evidentiary hearing phase in accordance with § 2.332(d); or

(ii) Otherwise, the triggering event for the evidentiary hearing as determined in the presiding officer's scheduling order issued in accordance with § 2.332.

(2) For contentions submitted after the Standard Hearing Completion Date, the initial decision must be issued within 100 days of:

(i) The admission of the contention if the presiding officer immediately proceeds to the evidentiary hearing phase in accordance with § 2.332(d); or

(ii) Otherwise, the triggering event for the evidentiary hearing as determined in the presiding officer's scheduling order issued in accordance with § 2.332.

(3) The Standard Hearing Completion Date in a proceeding under this paragraph (d) is 217 days after the **Federal Register** notice announcing the opportunity to request a hearing, except that the Standard Hearing Completion Date in a transfer proceeding under this paragraph (d) is 182 days after the **Federal Register** notice announcing the opportunity to request a hearing.

§§ 2.1208 and 2.1209 [Removed and Reserved]

■ 33. Remove and reserve §§ 2.1208 and 2.1209.

§ 2.1210 [Amended]

■ 34. In § 2.1210:

■ a. In paragraph (a) introductory text, remove the phrase ''an informal hearing'' and add in its place the phrase ''a hearing''; and

■ b. In paragraph (c) introductory text, remove the references ''§§ 2.1207 or 2.1208'' and add in its place the reference ''§ 2.1206''.

■ 35. In § 2.1213, revise paragraphs (a) and (c) to read as follows:

§ 2.1213 Application for a stay.

(a) Any application for a stay of the effectiveness of the NRC staff's action on a matter involved in a hearing under this subpart must be filed within seven (7) days of the issuance of the notice of the NRC staff's action under § 2.1202(a) and must be filed and considered in accordance with paragraphs (b), (c), and (d) of this section. In a license transfer proceeding, the application for stay must be filed with the Commission, which will decide whether to grant the stay application; in all other proceedings, the application for stay must be filed with the presiding officer for the proceeding.

* * * * *

(c) Within seven (7) days after service of an application for a stay of the NRC

staff's action under this section, any party, the NRC staff, or both, may file an answer supporting or opposing the granting of a stay. Answers may not be longer than ten (10) pages, exclusive of affidavits, and must concisely address the matters in paragraph (b) of this section as appropriate. Further replies to answers will not be entertained.

* * * * *

■ 36. Add § 2.1214 to read as follows:

§ 2.1214 Additional procedures for license transfer applications.

(a) *Notice of receipt and withdrawal of application.* (1) The Commission will notice the receipt of each application for direct or indirect transfer of a specific NRC license by placing a copy of the application at the NRC website, *https://www.nrc.gov.*

(2) The Commission will also publish in the **Federal Register** a notice of receipt of an application for approval of a license transfer involving licenses under part 50, 52, or 53 of this chapter, major fuel cycle facility licenses issued under part 70 of this chapter, or licenses under part 72 of this chapter. This notice constitutes the notice required by § 2.105 with respect to all matters related to the application requiring NRC approval.

(3) Periodic lists of applications received may be obtained upon request addressed to the NRC Public Document Room, US Nuclear Regulatory Commission, Washington, DC 20555–0001.

(4) The Commission will notice the withdrawal of an application by publishing the notice of withdrawal in the same manner as the notice of receipt of the application was published under paragraphs (a)(1) and (2) of this section.

(b) *Written comments.* (1) As an alternative to requests for hearings and petitions to intervene, persons may submit written comments regarding license transfer applications. The Commission will consider and, if appropriate, respond to these comments, but these comments do not otherwise constitute part of the decisional record.

(2) These comments should be submitted within 30 days after public notice of receipt of the application and addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

(3) The Commission will provide the applicant with a copy of the comments. Any response the applicant chooses to make to the comments must be submitted within 10 days of service of the comments on the applicant. Such responses do not constitute part of the decisional record.

(c) *Generic determination regarding license amendments to reflect transfers.* (1) Unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or the license of an Independent Spent Fuel Storage Installation which does no more than conform the license to reflect the transfer action, involves respectively, ''no significant hazards consideration,'' or ''no genuine issue as to whether the health and safety of the public will be significantly affected.''

(2) Where administrative license amendments are necessary to reflect an approved transfer, such amendments will be included in the order that approves the transfer. Any challenge to the administrative license amendment is limited to the question of whether the license amendment accurately reflects the approved transfer.

(d) *Role of NRC staff.* Except as otherwise directed in accordance with § 2.1202(b)(1), the NRC staff is not required to be a party to proceedings under this subpart but will offer into evidence its safety evaluation report associated with the transfer application and provide one or more sponsoring witnesses, if this safety evaluation report is available at the time a hearing is conducted.

Subpart M [Removed and Reserved]

■ 37. Remove and reserve subpart M.

Appendix B to Part 2 [Amended]

■ 38. In appendix B to part 2, remove and reserve sections II and III.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 39. The authority citation for part 51 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 193 (42 U.S.C. 2201, 2243); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); National Environmental Policy Act of 1969 (42 U.S.C. 4332, 4334, 4335); Nuclear Waste Policy Act of 1982, secs. 144(f), 121, 135, 141, 148 (42 U.S.C. 10134(f), 10141, 10155, 10161, 10168); 44 U.S.C. 3504 note.

Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under Nuclear Waste Policy Act secs. 135, 141, 148 (42 U.S.C. 10155, 10161, 10168).

Section 51.22 also issued under Atomic Energy Act sec. 274 (42 U.S.C. 2021) and under Nuclear Waste Policy Act sec. 121 (42 U.S.C. 10141).

Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10134(f)).

■ 40. In § 51.104:

■ a. Revise the section heading and paragraph (a); and

■ b. Remove and reserve paragraph (b).

The revisions read as follows:

§ 51.104 NRC proceeding using public hearings.

(a) In any proceeding in which a contested hearing is held, any party to the proceeding may take a position and offer evidence on the aspects of the proposed action within the scope of NEPA and this subpart in accordance with the provisions of part 2 of this chapter applicable to that proceeding or in accordance with the terms of the notice of hearing. In the proceeding, the presiding officer will decide any such matters in controversy among the parties.

* * * * *

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 41. The authority citation for part 52 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2134, 2167, 2169, 2201, 2231, 2232, 2233, 2235, 2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

■ 42. In § 52.21, revise the last sentence to read as follows:

§ 52.21 Administrative review of applications; hearings.

* * * All contested hearings conducted on applications for early site permits filed under this part are governed by the procedures contained in 10 CFR part 2, as applicable.

■ 43. In § 52.163, revise the last sentence to read as follows:

§ 52.163 Administrative review of applications; hearings.

* * * All hearings on manufacturing licenses are governed by the hearing procedures contained in 10 CFR part 2.

PART 53—RISK-INFORMED, TECHNOLOGY-INCLUSIVE REGULATORY FRAMEWORK FOR COMMERCIAL NUCLEAR PLANTS

■ 44. The authority citation for part 53 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 101, 103, 108, 122, 147, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234

(42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Pub. L. 115–439, 132 Stat. 5571.

■ 45. In § 53.1149, in paragraph (b), revise the last sentence to read as follows:

§ 53.1149 Review of applications.

* * * * *

(b) * * * All contested hearings conducted on applications for early site permits filed under this part are governed by the procedures contained in 10 CFR part 2, as applicable.

■ 46. In § 53.1285, in paragraph (b), revise the last sentence to read as follows:

§ 53.1285 Review of applications.

* * * * *

(b) * * * All hearings on MLs are governed by the hearing procedures contained in 10 CFR part 2.

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

■ 47. The authority citation for part 54 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 223, 234 (42 U.S.C. 2132, 2133, 2134, 2136, 2137, 2201, 2231, 2232, 2233, 2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); 44 U.S.C. 3504 note.

Section 54.17 also issued under E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391; ADVANCE Act of 2024, sec. 301 (42 U.S.C. 2133 note).

■ 48. Revise § 54.27 to read as follows:

§ 54.27 Hearings.

A notice of an opportunity for a hearing will be published in the **Federal Register** in accordance with 10 CFR 2.105 and 2.309. In the absence of a request for a hearing filed by a person whose interest may be affected, the Commission may issue a renewed operating license or renewed combined license without a hearing upon a 30-day notice and publication in the **Federal Register** of its intent to do so.

Dated: October 30, 2026.

For the Nuclear Regulatory Commission.

Jody Martin,

Secretary of the Commission.

[FR Doc. 2026–22443 Filed 11–2–26; 8:45 am]

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